PROCEDURE

IN THE

DIOCESAN MATRIMONIAL COURTS

OF FIRST INSTANCE

By

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and

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Those ecclesiastical officials who are in constant contact with the matrimonial forum will immediately appreciate and welcome a book of this nature—the first of its kind. All others who from time to time are called upon to serve in diocesan courts as well as those who are still pursuing their canonical course and priests in the active ministry will find concentrated here both the theory and the practice of the laws of the Church regarding the marriage bond. The jurisdiction of the courts is clearly explained, the duties of all the officials, the rights of the litigants, the formal and summary methods of conducting the trial—and note this: each statement is substantiated by the actual text of the New Code. At the end of the book a form is given for every document needed. The use of this book will therefore greatly expedite curial processes as well as ensure their completeness and accuracy.

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✠ PATRICK CARDINAL HAYES
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PREFACE

Canon Law prescribes that every diocese should have a Matrimonial Curia composed of competent judges and officers who, together with learned attorneys and lawyers, should discharge the duties of their offices in regular ecclesiastical tribunals functioning in the same manner as our Civil Courts.

It is evident that the average course in Canon Law given in our seminaries cannot produce ecclesiastical judges, any more than an ordinary college course is sufficient to form able civil lawyers. For this reason the Church requires a university course and the J.C.D. title, or at least a special and very thorough study of Canon Law, on the part of those who are to participate in her trials.

And rightly so. For if the State requires the members of its Courts to possess special qualifications and a deep knowledge of the civil laws, though the affairs settled by our civil tribunals have but a temporary and material importance, a fortiori the Church must demand an equal knowledge of her laws from men who are to pass judgment on a thing as sacred as a Sacrament,

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and whose decisions have to bear upon the destiny of immortal souls.

Unfortunately the rapid development of this country of ours makes it impossible for the great majority of our Bishops to allow a certain number of their priests to devote themselves to the study of Canon Law. Our Catholic population is so large and the number of our priests is so small that all our efforts must perforce be devoted to the daily work of parochial duties.

On the other hand, that very same development of the country brings to us many people rather ignorant of their religious obligations; the contact of our Catholics with their Protestant neighbors has created an atmosphere that is far from being favorable to the obedience due to the laws of the Church in the matter of marriage regulations. The result of these conditions is that we have here in the United States many more disputed marriage cases than in the Catholic countries of Europe where Church laws have been in practice for generations.

Our clergy are thus placed in the somewhat strange dilemma of being unable to give enough time to the study of the rules of procedure prescribed by Canon Law in the trials of marriage cases when, owing to circumstances, they ought to be more familiar here with these rules than in any other country.

As a consequence, many a marriage case which

should have been presented to the Diocesan Matrimonial Courts has never reached them because the parish priest, to whom naturally the parties go first, did not know how to properly present it to the authorities. And when, after many difficulties, a case has been filed with a Court, that same case usually lies for a long time in the pigeonholes of the Chancery; for the members of the Court hesitate to pronounce a judgment which they know runs the risk of being declared null and void because they will have unknowingly violated some essential rules of procedure.

We hope that our *Procedure in the Diocesan Matrimonial Courts* will replace the technical knowledge which lack of time and other reasons made it impossible for our confrères to acquire, and that it will spare them many a difficulty which the authors themselves have encountered in the discharge of their office as members of Ecclesiastical Courts.

THE AUTHORS.

Under the auspices of Our Immaculate Mother,
this the 2d day of February, 1928,
FEAST OF HER PURIFICATION.

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INTRODUCTION

This book, as its title indicates, is not a commentary or explanation of the laws of Holy Mother Church regarding marriage; it is merely a book of Procedure, pointing out the steps to be followed and giving forms to be used in the trial of cases before our Diocesan Matrimonial Courts.

In order that a clear understanding of the scope of the subject-matter treated in this book may be had, it will be necessary to mention those classes of matrimonial cases over which our Diocesan Matrimonial Courts have no jurisdiction; and thus, by a process of elimination, we shall more clearly point out the classes of cases embraced within the jurisdiction of these Courts.

According to Canon 1962 of the *Codex,* the Holy See has retained exclusive jurisdiction over marriage cases concerning rulers of nations, their sons and daughters, or those who have a right to proximate succession.

According to the same Canon, cases of marriage ratified but not consummated (ratum, sed non consummatum), are reserved to the Sacred

Congregation of the Sacraments; and all cases concerning the Pauline Privilege are reserved to the Congregation of the Holy Office.

All of the above mentioned cases, since they are necessarily referred to Rome, are subject to special rules of procedure promulgated by the Holy See, and they are not taken into consideration in this book.[1]

Under Canon 1964,[2] the Diocesan Matrimonial Courts have been granted jurisdiction over all other marriage cases. These cases are divided into three classes:

1. Cases in which the validity of the matrimonial bond itself is questioned, being attacked on account of a diriment impediment causing the marriage to be invalid ab initio.

[1] CAN. 1962. Causas matrimoniales ad eos spectantes de quibus in can. 1557, § 1, n.1, illa Sacra Congregatio vel illud Tribunal aut specialis ea Commissio exclusive cognoscet, cui eas toties quoties Summus Pontifex delegaverit; causas dispensationis super matrimonio rato et non consummato, Sacra Congregatio de disciplina Sacramentorum; causas vero quae referuntur ad privilegium Paulinum, Sacra Congregatio S. Officii.

CAN. 1963 § 1. Quare nullus judex inferior protest processum in causis dispensationis super rato instruere, nisi Sedes Apostolica facultatem eidem fecerit.

CAN. 1557 § 1, 1°. Ipsius Romani Pontificis dumtaxat jus est judicandi eos qui supremum tenent populorum principatum horumque filios ac filias eosve quibus jus est proxime succedendi in principatum.

CAN. 1555 § 1. Tribunal Congregationis S. Officii suo more institutoque procedit sibique propriam consuetudinem retinet; et etiam inferiora tribunalia, in causis quae ad S. Officii tribunal spectant, normas ab eodem traditas sequantur oportet.

[2] CAN. 1964. In aliis causis matrimonialibus judex competens est judex loci in quo matrimonium celebratum est aut in quo pars conventa vel, si una sit acatholica, pars catholica domicilium vel quasi-domicilium habet.

2. Cases in which relief is sought from effects flowing from the very nature of marriage itself. For example, marriage requires cohabitation; hence, a petition for separation from bed and board asks that this natural effect of marriage be dispensed with.
3. Cases in which relief is sought from the purely civil effects of the marriage; for instance, the division of property between the two parties.

As an ecclesiastical Court determines questions concerning purely civil matters only when they are presented as accidental issues in the determination of other issues properly belonging to the Court,[1] this book does not specifically treat of the procedure to be followed in the third class of cases.

Likewise, as the second class of cases above mentioned, while properly belonging to our Diocesan Matrimonial Courts, are very seldom brought before them, this book does not consider them.

Therefore, the procedure explained in the following pages is restricted to the first class of cases, in which the matter at issue is the validity

[1] CAN. 1961. Causae de effectibus matrimonii mere civilibus, si principaliter agantur, pertinent ad civilem magistratum ad normam can. 1016; sed si incidenter et accessorie, possunt etiam a judice ecclesiastico ex propria potestate cognosci ac definiri.

CAN. 1016. Baptizatorum matrimonium regitur jure non solum divino, sed etiam canonico, salva competentia civilis potestatis circa mere civiles ejusdem matrimonii effectus.

vel non of the matrimonial contract itself, as the business of our Courts consists almost entirely of the determination of cases of this character.

Part I of this book explains briefly the organization of the Diocesan Matrimonial Court, functioning either as a Court of First Instance or as a Court of Appellate Jurisdiction; its membership; the rights and duties of its officers; and its manner of functioning. A few explanations concerning the litigants and their representatives is also included in this Part.

Part II gives the procedure of the Court. Chapter I explains in detail the procedure of the lower Court, or Court of First Instance, in the solemn trial, which is the one usually held, and in which all the solemnities prescribed by Canon Law must be strictly followed. Chapter II considers the Appeal and the procedure of the Appellate Court. Chapter III deals with the procedure in summary trials permitted by Canon Law in certain cases, in which the rules of procedure are restricted to the doing of those acts necessary and essential to a trial.

Part III gives practical forms which may be used in the progress of the trial.

PART I

THE DIOCESAN MATRIMONIAL COURT

THE DIOCESAN MATRIMONIAL COURT

Chapter I

MEMBERSHIP OF THE COURT

1. The Diocesan Matrimonial Court consists of the following members: the Judges, the Defensor Vinculi, the Promoter of Justice, the Secretary, and such minor officers as Court Sheriffs, Messengers, and, when necessary, Interpreters.

I. The Judges

2. The Judges in our Diocesan Matrimonial Courts are the local Ordinary, the Officialis, the Vice-Officials, and the Synodal and Pro-Synodal Judges.

1. THE LOCAL ORDINARY

3. By local Ordinary is meant here the resident Bishop, his Vicar General, the Administrator of the diocese, the Vicar Apostolic, the Prefect Apostolic, and those who are acting in their place during their absence.[1]

4. The local Ordinary is the judge in the Tribunal of First Instance of all matrimonial cases

[1] See Canon 198 §§ 1 and 2.

not reserved to the Holy See. He alone, by right of his office, is vested with judicial power, which he may exercise either by himself or through others appointed by him.

5. Although the Ordinary possesses the right to preside in person in matrimonial cases tried by the Collegiate Tribunal, yet, according to the provisions of Canon 1578, it is much better that the Officialis or one of the Vice-Officials should preside in these cases.

DE ORDINARIO LOCI

CAN. 1572 § 1. In unaquaque dioecesi et pro omnibus causis a jure expresse non exceptis, judex primae instantiae est loci Ordinarius, qui judiciariam potestatem exercere potest ipse per se, vel per alios, secundum tamen canones qui sequuntur.

CAN. 1578. Exceptis causis de quibus in can. 1572, § 2, Episcopus semper potest tribunali ipse per se praeesse; sed valde expedit ut causas, praesertim criminales et contentiosas gravis momenti, judicandas relinquat tribunali ordinario, cui praesit officialis vel vice-officialis.

2. THE OFFICIALIS

6. It is the duty of the Bishop to appoint an Officialis with ordinary[1] judicial power.

7. The Officialis should be a person distinct from the Vicar General. However, in small dio-

[1] Potestas jurisdictionis ordinaria ea est quae ipso jure adnexa est officio; delegata, quae commissa est personae.
Potestas ordinaria potest esse sive propria sive vicaria. (Can. 197 §§ 1 & 2.)

ceses, or in dioceses in which few cases are presented for trial, the Vicar General may be appointed to this office.

8. The Officialis is the head of the Matrimonial Court; he is the representative of the Bishop and acts in his place and stead. When so acting, Canon Law considers him as the same person as the Bishop, having the same powers for the judging of cases as the Bishop himself possesses. Canon 1573 § 2 expresses this thought very clearly in the following terms: "Officialis unum constituit tribunal cum Episcopo loci."

9. It is clear, therefore, that when the Officialis has acted in a case, the Bishop has no power to review his acts, because the Bishop and the Officialis are one and the same moral person, and an appeal cannot be taken to a person from his own decision. The Bishop has the right, however, to reserve certain cases to be decided by himself, as he is the one who appoints the Officialis, and the Officialis always remains subject to his orders.

10. The Officialis must be a priest not less than thirty years of age, of good reputation, a Doctor of Canon Law, or at least learned in it.

11. The Officialis can be removed at any time by the Bishop. When the See is vacant, the Officialis remains in office and cannot be removed therefrom by the Vicar Capitular; when a new

Bishop assumes charge of the See, the Officialis must be confirmed in office by him.

12. If the same person fills the office of Vicar General and of Officialis, he ceases to be Vicar General when the See becomes vacant, but continues in office as Officialis.

13. If the Officialis is elected Vicar Capitular, he himself appoints another Officialis.

DE OFFICIALI

CAN. 1573 § 1. Quilibet Episcopus tenetur officialem eligere cum potestate ordinaria judicandi, a Vicario Generali distinctum, nisi parvitas dioecesis aut paucitas negotiorum suadeat hoc officium ipsi Vicario Generali committi.

§ 2. Officialis unum constituit tribunal cum Episcopo loci: sed nequit judicare causas quas Episcopus sibi reservat.

§ 4. Tum officialis tum vice-officiales esse debent sacerdotes, integrae famae, in jure canonico doctores vel ceteroqui periti, annos nati non minus triginta.

§ 5. Sunt amovibiles ad nutum Episcopi; vacante sede, a munere non cessant, nec a Vicario Capitulari amoveri possunt; adveniente autem novo Episcopo, indigent confirmatione.

§ 6. Qui Vicarius Generalis est idemque officialis, sede vacante, cessat quidem a Vicarii, non autem ab officialis munere.

§ 7. Si officialis eligatur in Vicarium Capitularem, ipse novum nominat officialem.

3. THE VICE-OFFICIALS

14. If the Officialis is unable, either through stress of other duties or because of the multi-

plicity of the cases, to properly attend to all of the business of the Court and to preside at all of the trials, he may have assistants who are called Vice-Officials.

15. Like the Officialis, these Vice-Officials are selected by the Bishop.[1]

16. The rules governing the qualifications, appointment and removal of the Officialis apply to the Vice-Officials. (Can. 1573 §§ 4, 5.)

17. When a marriage case is presented to the Court, it is the duty of the Officialis to assume charge of it or to designate one of the Vice-Officials to sit in his stead as President of the Collegiate Tribunal.

DE VICE-OFFICIALI

CAN. 1573 § 3. Officiali dari possunt adjutores, quibus nomen est vice-officialium.

4. SYNODAL AND PRO-SYNODAL JUDGES

18. In every diocese priests of tried virtue and learned in Canon Law shall be appointed for the purpose of acting as Judges in the deciding of cases, with powers delegated from the Bishop. Not more than twelve such priests shall be appointed.

19. If such priests are appointed in the Dio-

[1] Canon Law does not require that either the Officialis or the Vice-Officials be selected by the Bishop from among the Synodal or Pro-Synodal Judges.

cesan Synod, they are termed Synodal Judges; if they are appointed outside of the Synod, they are termed Pro-Synodal Judges; the powers and duties of both, however, being the same.

20. It is not necessary that the priests so appointed shall belong to the diocese in which they act.

21. As regards their election, substitution, removal from office, and the expiration of their terms, the laws of Can. 385-388 must be observed.

22. In accordance with these canons, Synodal Judges are appointed in the Synod: they are proposed by the Bishop and approved by the Synod.

23. As many Synodal Judges should be appointed as in the judgment of the Bishop may be necessary, the minimum number, however, being four, and the maximum number twelve.

24. If a Synodal Judge should die, or for any other reason cease to officiate as such, it is the duty of the Bishop to replace him by selecting a Pro-Synodal Judge as his substitute. In selecting the Pro-Synodal Judge, the Bishop should consult the Cathedral Chapter or diocesan consultors.[1]

25. In dioceses where there are no Synodal Judges, it is the duty of the Bishop to appoint

[1] CAN. 427. Coetus consultorum dioecesanorum vices Capituli cathedralis, qua Episcopi senatus supplet.

Pro-Synodal Judges in accordance with the foregoing rules.

26. The Judges, whether Synodal or Pro-Synodal, hold office for ten years from the date of their appointment. In the event that a new synod is held prior to the expiration of the ten years, the term of office of all the Judges expires. They are allowed, however, to finish the cases which they have commenced, and they may be reappointed.

27. Judges who are appointed as substitutes in the place of another Judge, remain in office only until the completion of the term of the Judge in whose place they have been appointed.

28. Judges cannot be removed by the Bishop except for a grave cause and only after the Cathedral Chapter has been consulted by him.

29. The Judges of the Matrimonial Court are selected from the Synodal and Pro-Synodal Judges; and, unless there is a special reason for not doing so, they must be selected in rotation (per turnum).

DE JUDICIBUS SYNODALIBUS ET PRO-SYNODALIBUS

CAN. 1574 § 1. In qualibet dioecesi presbyteri probatae vitae et in jure canonico periti, etsi extradioecesani, non plures quam duodecim eligantur ut potestate ab Episcopo delegata in litibus judicandis partem habeant; quibus nomen esto *judicum synodalium* aut *pro-synodalium*, si extra Synodum constituuntur.

§ 3. Nomine judicum synodalium in jure veniunt quoque judices pro-synodales.

Can. 1574 § 2. Quod ad eorum electionem, substitutionem, cessationem aut remotionem a munere attinet, serventur praescripta can. 385-388.

Can. 385 § 1. [Judices synodales] in Synodo constituantur, propositi ab Episcopo, a Synodo approbati.

§ 2. Tot eligantur quot Episcopus prudenti suo judicio necessarios judicaverit, non tamen infra quatuor, nec ultra duodecim.

Can. 386 § 1. [Judicibus synodalibus] inter unam et aliam Synodum demortuis vel alia ratione a munere cessantibus, alios pro-synodales Episcopus substituat de consilio Capituli cathedralis.

§ 2. Quae regula servetur quoque in [judicibus] constituendis quoties Synodus non habeatur.

Can. 387 § 1. [Judices] sive in Synodo sive extra Synodum constituti, post decennium ab incepto munere vel etiam prius, adveniente nova Synodo, officio cadunt; possunt tamen negotium jam coeptum ad exitum perducere et, servatis de jure servandis, denuo constitui.

§ 2. Qui loco [judicum] deficientium constituantur, in officio persistunt dumtaxat quousque perstitissent ii quibus substituti fuerunt.

Can. 388. Removeri ab Episcopo nequeunt, nisi ex gravi causa et de consilio Capituli cathedralis.

Can. 1576 § 3. Duos vel quatuor judices qui una cum praeside tribunal collegiale constituunt, inter judices synodales Ordinarius, nisi pro sua prudentia aliter opportunum existimaverit, eligat per turnum.

5. THE AUDITOR

30. The Auditor acts as judge instructor and Court assistant.

31. It is the duty of the Auditor to cite and to hear the witnesses and to render such orders as may be necessary for these proceedings; to examine and pass upon the authenticity of all documents filed in the case, and to prepare the case so that it may be conveniently and readily presented to the Court for trial. In a word, he represents the Court in all preliminary proceedings prior to the actual determination of the case by the Court itself; but he does not take part in the rendition of the final judgment nor in the writing of it, the judgment being prepared by the Ponens. The Auditor ceases to function when the trial is concluded, his final act being the order closing the trial.

32. The foregoing are the usual duties performed by the Auditor. But all of these duties may not be required of him; for example, he may be ordered merely to hear the testimony of witnesses. In its mandate the Court will instruct him as to which of these duties it desires him to perform; and the instructions of the Court should be strictly adhered to by him, otherwise his acts would be null.

33. The Ordinary may appoint one or several Auditors to act in all cases coming before the Matrimonial Court, or to act only in a particular case. If the Ordinary has not appointed an Auditor, the President of the Court may appoint one for the particular case which is to be tried.

34. Whenever possible, the Auditors should be selected from among the Synodal Judges.

35. The Auditor may be removed at any time during the trial by the one who appointed him, provided that there is a reasonable cause for so doing, and, further, that his removal will not prejudice either of the party litigants.

DE AUDITORE

Can. 1580 § 1. Potest Ordinarius unum aut plures auditores, seu actorum instructores, sive stabiliter sive pro certa aliqua causa constituere.

§ 2. Judex auditorem eligere potest tantummodo pro causa quam cognoscit, nisi Ordinarius jam providerit.

Can. 1581. Auditores pro tribunali dioecesano, quantum fieri potest, deligantur ex judicibus synodalibus.

Can. 1582. Eorum est testes citare et audire, aliaque acta judicialia instruere secundum tenorem mandati, non autem sententiam definitivam ferre.

Can. 1583. Auditor in quovis litis momento ab officio removeri potest ab eo qui eundem elegit, justa tamen de causa, et citra partium praejudicium.

6. THE COLLEGIATE TRIBUNAL (TRIBUNAL COLLEGIALE)

36. The Collegiate Tribunal is a Court composed of a Chief, or Presiding Judge, and two or four Associate Judges.

37. The Associate Judges are selected in rotation (per turnum) from among the Synodal and Pro-Synodal Judges, unless for a special reason

the Ordinary deems it prudent to make the selection otherwise.

38. Canon Law specifically states that all matrimonial cases not summarily tried must be decided by a Collegiate Tribunal or Board of Judges which shall be composed of three or five members, including the President, or Presiding Judge.

39. The Collegiate Court acts as a body, and sentences are pronounced in accordance with the opinion of the majority of its members.

40. The Officialis or one of the Vice-Officials is the Presiding Judge. He directs the trial and orders whatever is necessary for the proper conduct of the case.

41. The Bishop has always the right to act as Presiding Judge of the Court; but Canon Law (1578) specifically urges him not to do so, stating that it is much better to let the Officialis or a Vice-Official preside over the Court, particularly in cases involving important civil matters. Matrimonial cases being classed as civil cases of great importance, the foregoing provisions of Canon Law should be observed in such trials.

DE TRIBUNALI COLLEGIALI

Can. 1576 § 1. Reprobata contraria consuetudine et revocato quolibet contrario privilegio:

Causae contentiosae de vinculo . . . matrimonii . . . tribunali collegiali trium judicum reservantur.

§ 3. Duos vel quatuor judices qui una cum praeside tribunal collegiale constituunt, inter judices synodales Ordinarius, nisi pro sua prudentia aliter opportunum existimaverit, eligat per turnum.

Can. 1577 § 1. Tribunal collegiale collegialiter procedere debet, et ad majorem suffragiorum partem sententias ferre.

§ 2. Eidem praeest officialis vel vice-officialis, cuius est processum dirigere et decernere quae pro justitiae administratione in causa qua agitur necessaria sunt.

Can. 1578. [In causis matrimonialibus] Episcopus semper potest tribunali ipse per se praeesse; sed valde expedit ut causas, praesertim . . . contentiosas gravis momenti, judicandas relinquat tribunali ordinario, cui praesit officialis vel vice-officialis.

7. THE REFEREE

(PONENS SEU RELATOR)

42. It is the duty of the President of the Collegiate Tribunal to appoint from among the Associate Judges a Referee, or reporter (Ponens seu relator). It is this official's duty to write the sentences (interlocutory or final) of the Court, and to inform the Court of the status or progress of the case on trial.

DE PONENTE

Can. 1584. Tribunalis collegialis praeses debet unum de judicibus collegii ponentem seu relatorem designare qui in coetu judicum de causa referat et sententias in scriptis redigat; et ipsi idem praeses potest alium ex justa causa substituere.

II. The Other Members of the Court

1. THE DEFENDER OF THE MATRIMONIAL BOND

(DEFENSOR VINCULI)

43. In each diocese there must be a Defensor Vinculi appointed by the Ordinary for cases in which the matrimonial bond is questioned.

44. The Defensor Vinculi may be appointed either for all cases coming before the Court, or any particular case.

45. The office of Defensor Vinculi is an essential part of the Matrimonial Court in cases of nullity or of matrimonium ratum sed non consummatum. Failure to appoint a Defensor Vinculi would render the trial and the sentence null and void.

46. *Qualities.* It is the duty of the Ordinary to appoint as Defensor Vinculi a priest of excellent reputation, a Doctor of Canon Law or otherwise learned in it; and, in addition, he must be known as being zealous and prudent in the cause of justice.

47. *Removal.* The Defensor Vinculi officially appointed for the conduct of all cases does not lose his position when the episcopal See becomes vacant; neither can he be removed by the Vicar Capitular. However, when the new Bishop takes office, the Defensor Vinculi must be con-

firmed by him in his position. The Bishop may remove the Defensor Vinculi for a just cause.

48. *Duties.* The duties of the Defensor Vinculi will be explained in full in Part II of this book. In this chapter we shall give only a résumé of his duties as contained in Canon 1968.

The Defensor Vinculi is obligated to perform the following duties:

1. To be present at the examinations of the parties, witnesses and experts; to exhibit to the Judge a sealed list of questions, which should be opened by the Judge only at the time of the examination of the parties, witnesses or experts; to suggest to the Judge any other questions or interrogatories made necessary by their testimony.
2. To examine and study the allegations and proofs submitted by the parties, and, if necessary, to contradict them; to examine the documents exhibited and filed by the parties.
3. To prepare in writing his arguments against the nullity of the marriage in question, and to present in his brief his reasons why the marriage should be held valid, supported by whatever proof of the validity of said marriage is in the record; in a word, to urge every point that in his opinion is useful for the safeguarding and preservation of the marriage bond, or, in cases of matrimonium ratum sed non

consummatum, to show that the marriage has been consummated.

49. *Rights.* The particular rights of the Defensor Vinculi are described also in Part II.

In a general way, it is the right of the Defensor Vinculi:

1. At all times to have access to the record and to examine all of the proceedings, although these proceedings have not yet been published; to ask the Court for additional time for the completion of his examinations and the preparation of his arguments or briefs.
2. To be informed of all the proofs furnished and submitted to the Court, and of all allegations made by the parties, in order that he shall have the opportunity to contradict them.
3. To have new witnesses examined, or the same witnesses recalled for examination, even though the proceedings be closed or published; to file at any time additional reasons supporting his contentions.
4. To demand that whatever he has suggested as necessary for the proper trial of the case should be done, unless the tribunal unanimously refuses to comply with his demands.

50. In cases in which the validity of the marriage is questioned, and in cases of matrimonium ratum sed non consummatum, both for the proof of the non consummation of the marriage and for the determination of the reasons for the dis-

solution of said marriage, the Defensor Vinculi must be cited.

51. Whenever the presence of the Defensor Vinculi is necessary and he is not cited, whatever is done in his absence is null and void. However, if he is present, although not cited, the failure of citation does not affect the validity of the proceedings.

52. If the Defensor Vinculi, having been duly and properly cited, fails to be present during any portion of the trial, the proceedings held in his absence are valid. However, all of these proceedings must subsequently be submitted to him for examination in order that he may object to them or suggest whatever in his opinion might be necessary or proper.

53. The Defensor Vinculi has always the right to close the case; that is, in all parts of the proceedings he shall always be heard last, whether the defense be written or oral.

54. No final sentence can be rendered by the Tribunal before the Defensor Vinculi has declared that he is satisfied that no other proof should be obtained, or that there are no other facts which should be investigated.

55. A copy of all the pleadings and arguments filed by the parties must be served upon the Defensor Vinculi.

56. After the rendition of the sentence, the Defensor Vinculi may attack its validity on the

ground that the trial has not been conducted in accordance with the prescriptions of Canon Law.

57. In all cases the right to appeal within the specified time from the judgment of the lower Court to a higher Court is granted to the Defensor Vinculi except in those cases in which an appeal is specifically excluded by Canon 1880.

58. When a marriage has been declared null by the Court of First Instance after a solemn trial has been held, the Defensor Vinculi must appeal the case to a higher Tribunal; and if he should neglect this duty, the Court must compel him to do so.

59. On the other hand, the Defensor Vinculi is not required to file an appeal when a marriage has been summarily tried according to Canon 1990 and the marriage declared null, if in his opinion the impediment evidently exists and no dispensation has been granted.

60. The Defensor Vinculi is not allowed to act in any case in which he is personally interested. The same causes for the recusation of Judges as provided in Canon 1613 apply to the Defensor Vinculi. (See No. 81.)

DE DEFENSORE VINCULI

Can. 1586. Constituatur in dioecesi . . . defensor vinculi . . . pro causis, in quibus agitur de vinculo sacrae ordinationis aut matrimonii.

Can. 1588 § 2. Promotor [justitiae] et defensor [vin-

culi] constitui possunt tum ad universitatem causarum tum pro singulis causis.

CAN. 1967. Sive agatur de nullitate matrimonii, sive de probandis inconsummatione et causis ad dispensandum super rato, citari debet defensor vinculi matrimonialis, ad normam can. 1586.

CAN. 1589 § 1. Ordinarii est promotorem justitiae et vinculi defensorem eligere, qui sint sacerdotes integrae famae, in jure canonico doctores vel ceteroqui periti, ac prudentiae et justitiae zelo probati.

CAN. 1590 § 1. Promotor justitiae et vinculi defensor electi ad universitatem causarum a munere non cessant, sede episcopali vacante, nec a Vicario Capitulari possunt removeri; adveniente autem novo Praelato, indigent confirmatione.

§ 2. Justa tamen intercedente causa, Episcopus eos removere potest.

CAN. 1968. Defensoris vinculi est:

1°. Examini partium, testium et peritorum adesse; exhibere judici interrogatoria clausa et obsignata, in actu examinis a judice aperienda, et partibus aut testibus proponenda; novas interrogationes, ab examine emergentes, judici suggerere;

2°. Articulos a partibus propositos perpendere, eisque, quatenus opus sit, contradicere; documenta a partibus exhibita recognoscere;

3°. Animadversiones contra matrimonii nullitatem ac probationes pro validitate aut pro consummatione matrimonii scribere et allegare, eaque omnia deducere, quae ad matrimonium tuendum utilia censuerit.

CAN. 1969. Defensori vinculi jus esto:

1°. Semper et quolibet causae momento acta processus, etsi nondum publicati, invisere; novos terminos ad scripta perficienda flagitare, prudenti judicis arbitrio prorogandos;

2°. De omnibus probationibus vel allegationibus ita certiorem fieri, ut contradicendi facultate uti possit;

3°. Petere ut alii testes inducantur vel iidem iterum

examini subjiciantur, processu etiam absoluto vel publicato, novasque animadversiones edere;

4°. Exigere ut alia acta, quae ipse suggesserit, conficiantur, nisi tribunal unanimi suffragio dissentiat.

Can. 1745 § 1. . . . tum etiam promotor justitiae et defensor vinculi possunt judici exhibere articulos, seu quaesita, super quibus pars interrogetur, quaeque vulgo *positiones* dicuntur.

Can. 1759 § 1. Testes a partibus inducuntur.

§ 2. Possunt quoque induci a promotore justitiae et defensore vinculi, si id ad causam intersit.

Can. 1587 § 1. In causis in quibus eorum praesentia requiritur, promotore justitiae aut vinculi defensore non citato, acta irrita sunt, nisi ipsi, etsi non citati, revera interfuerint.

§ 2. Si legitime citati aliquibus actibus non interfuerint, acta quidem valent, verum postea eorum examini subjicienda omnino sunt ut ea omnia sive voce sive scriptis possint animadvertere et proponere quae necessaria aut opportuna judicaverint.

Can. 1984 § 1. Defensor vinculi jus habet ut in allegando, petendo et respondendo tam in scriptis quam in defensione orali, audiatur postremus.

§ 2. Quare tribunal ad definitivam sententiam ne deveniat, nisi prius vinculi defensor interrogatus declaraverit sibi nihil deducendum vel inquirendum superesse.

§ 3. Si vero ante praefinitum a judice judicii diem defensor nihil deduxerit, praesumitur eum nihil jam deducendum habere.

Can. 1863 § 2. Sed etiam promotori justitiae et defensori vinculi, si judicio intersint, debet exemplar [defensionis] tradi.

Can. 1897 § 1. Querelam nullitatis interponere possunt nedum partes, quae se gravatas putant, sed etiam promotor justitiae aut defensor vinculi, quoties judicio interfuerunt.

Can. 1879. Pars quae aliqua sententia se gravatam putat, itemque promotor justitiae et defensor vinculi in

causis in quibus interfuerunt, jus habent a sententia appellandi, idest provocandi ab inferiore judice qui sententiam tulit, ad superiorem, salvo praescripto can. 1880.

CAN. 1986. A prima sententia, quae matrimonii nullitatem declaraverit, vinculi defensor, intra legitimum tempus, ad superius tribunal provocare debet; et si negligat officium suum implere, compellatur auctoritate judicis.

CAN. 1991. Adversus hanc declarationem defensor vinculi, si prudenter existimaverit impedimenta de quibus in can. 1990 non esse certa aut dispensationem super eisdem probabiliter intercessisse, provocare tenetur ad judicem secundae instantiae, ad quem acta sunt transmittenda quique scripto monendus est agi de casu excepto.

2. PROMOTER OF JUSTICE

(PROMOTOR JUSTITIAE)

61. The Promoter of Justice has a twofold duty: in Criminal cases, he is a prosecuting attorney; in Civil cases, when the public welfare demands it, it is his duty to file and prosecute said cases, first having obtained the opinion of the Ordinary as to the necessity of the action.

It is in this last capacity only that we shall consider the Promoter of Justice.

62. In the Matrimonial Court, the duty of the Promoter of Justice may become very important; for, in certain cases, when it is necessary for the public good that a marriage should be declared null and void, and neither party to the marriage is willing to take the necessary steps to have it declared null, it then becomes the duty

of the Promoter of Justice, assuming the function of plaintiff, to present the case to the Matrimonial Court and prosecute it to a final determination.

63. As to the appointment, qualities and removal of the Promoter of Justice, the same prescriptions of Canon Law concerning the Defensor Vinculi apply.

DE PROMOTORE JUSTITIAE

Can. 1586. Constituatur in dioecesi *promotor justitiae* . . . pro causis, tum contentiosis in quibus bonum publicum, Ordinarii judicio, in discrimen vocari potest, tum criminalibus; . . .

Can. 1971 § 1. Habiles ad accusandum sunt:

1°. Conjuges, in omnibus causis separationis et nullitatis, nisi ipsi fuerint impedimenti causa;

2°. Promotor justitiae in impedimentis natura sua publicis.

§ 2. Reliqui omnes, etsi consanguinei, non habent jus matrimonia accusandi, sed tantummodo nullitatem matrimonii Ordinaro vel promotori justitiae denuntiandi.

3. THE SECRETARY (ACTUARIUS)

64. Every Diocesan Matrimonial Court should have a permanent Secretary, appointed by the Bishop, whose duty it is to receive the petitions presented to the Court, file, number and properly docket them, according to the directions given in Part II.

65. The Chancellor may be appointed Secretary of the Court, if he has sufficient time to fulfill its duties. In dioceses where many matrimonial cases are presented to the Court, it is advisable that the Court should have a Secretary other than the Chancellor.

66. The Court Secretary is appointed not only to receive, file and docket petitions presented to the Court, but it is also his duty to act as Secretary of the Court during the trials. If it should happen, however, that the cases are so numerous as to render it impossible or difficult for the Secretary to be present at all of the trials, the Presiding Judge should then appoint a special Secretary for the particular case presented, unless the Bishop or the Officialis has previously appointed one.

67. The permanent Secretary of the Court or the Secretaries appointed in individual cases, must be selected from among the ecclesiastical Notaries of the diocese.[1]

[1] It is to be remembered that in accordance with Canons 373 and 374 the Bishop of the diocese may and in certain cases should appoint a certain number of ecclesiastical Notaries.

Can. 373 § 1. Episcopus praeter cancellarium potest alios quoque notarios constituere, quorum scriptura aut subscriptio publicam fidem facit.

§ 2. Iidem constitui possunt aut ad quaelibet acta, aut ad acta judicialia dumtaxat, aut ad acta tantummodo certae causae vel negotii conficienda.

§ 3. Si clerici desint, possunt e laicis assumi; sed notarius in criminalibus clericorum causis debet esse sacerdos.

§ 4. Cancellarius aliique notarii debent esse integrae famae et omni suspicione majores.

§ 5. Omnes possunt removeri aut suspendi ab eo qui illos constituit, aut ad ejus successore aut Superiore, non autem a Vicario Capitulari, nisi de consensu Capituli.

68. The duties of the Secretary will be explained in detail in Part II of this book.

Briefly expressed, these duties are as follows:

1. To record in writing the proceedings, or at least to sign these proceedings if reduced to writing by another.

2. To record in writing the testimony of witnesses. The answers of all witnesses must be written verbatim by the Secretary, unless in the opinion of the Judge it is sufficient to record only the substance of the testimony so given.

3. To record in writing the minutes of the Court, and, together with the Judge or President of the Tribunal, to sign every act or proceeding of the Court, whether it is complete or incomplete.

4. To keep a record of the case, numbering and signing each sheet used, and placing the seal of the Court upon same.

5. When a case is appealed, the Secretary must send the complete record in proper form to the Appellate Court; otherwise the Judge of the Appellate Court may refuse to receive it.

69. In case of an appeal, all of the proceedings, having been written as provided in Canons 1642 and 1643 must be bound in book form and an index prepared of all of the proceedings and documents which have been filed. The Secretary or the Chancellor must certify in writing that the record so bound and sent to the Appellate

Court is a complete and faithful transcript of all of the proceedings and documents in the case.

DE ACTUARIO

CAN. 1585 § 1. Cuilibet processui interesse oportet notarium, qui actuarii officio fungatur; adeo ut nulla habeantur acta, si actuarii manu non fuerint exarata, vel saltem ab eo subscripta.

§ 2. Quare judex, antequam causam cognoscere incipiat, in actuarium assumere debet unum e notariis legitime constitutis, nisi ipse Ordinarius aliquem pro ea causa jam designaverit.

CAN. 1773 § 1. Examen fit a judice, vel ab ejus delegato aut auditore, cui assistat oportet notarius.

CAN. 1778. Responsio ex continenti redigenda est scripto ab actuario non solum quod attinet ad substantiam, sed etiam ad ipsa editi testimonii verba, nisi judex, attenta causae exiguitate, satis habeat unam depositionis substantiam referri.

CAN. 1643 § 1. Singula folia processus numerentur; et actuarii subscriptio cum sigillo tribunalis apponatur in unoquoque folio.

§ 2. Singulis actis completis vel interruptis seu ad aliam sessionem remissis, apponatur subscriptio actuarii et judicis vel tribunalis praesidis.

§ 3. Quoties in actis judicialibus partium aut testium subscriptio requiritur, si pars aut testis hanc facere nequeat vel nolit, id in ipsis actis adnotetur, simulque judex et actuarius fidem faciant actum ipsum de verbo ad verbum parti aut testi perlectum fuisse, et partem aut testem vel non potuisse vel noluisse subscribere.

CAN. 1644 § 1. In casu appellationis, actorum exemplaria ad normam can. 1642, 1643, conscripta et in fasciculum religata, cum indice omnium actorum et documentorum et cum testificatione actuarii seu cancellarii de eorum fideli transcriptione et integritate, mittantur ad

superius tribunal; si exemplaria sine gravi incommodo exscribi nequeant, mittantur cum opportunis cautelis acta ipsa originalia.

§ 2. Si eo mittenda sint ubi vernacula lingua non sit cognita, acta ipsa in linguam latinam vertantur, adhibitis cautelis ut de fideli transatione constet.

4. THE SHERIFF (APPARITOR) AND THE COURT MESSENGER (CURSOR)

70. The duty of the Sheriff is to execute the sentences and decrees of the Court.

71. The duty of the Messenger is to serve all summonses, copies of pleadings and of the proceedings of the Court, etc., which are required by Canon Law to be served on any party or officer of the Court.

72. Summonses may be served in three different manners: by courier, by registered mail, and by public edict.[1]

73. The courier is the ordinary and most reliable means of conveying a summons. The Court messenger should, as a rule, hand the summons to the person subpoenaed wherever this person is to be found, whether in the diocese of the Court or in another diocese.[2]

[1] The courier and the registered mail may also be used to deliver any legal papers which the Court may order served on any person. In these cases the duties of the Court messenger are the same as those explained in the following paragraphs.

[2] If the person subpoenaed lives in another diocese, the Judge is at liberty to decide whether it is more expedient to convey the summons by registered mail or by courier. If a courier is to be sent, the Judge issues an order directing the Court messenger to convey and hand the summons to the person subpoenaed.

When delivering the summons into the hands of the person subpoenaed, the messenger must write on the citation itself the date and the hour of delivery and affix his signature.

74. If the person subpoenaed refuses to accept the summons, the messenger will return it to the Court, and will write on said summons the date and the hour when it has been rejected.[1]

75. If the person subpoenaed is not to be found at home, the messenger may leave the citation with a member of the family or with one of the servants, provided this person is willing to accept the summons and promises to deliver it as soon as possible to the person subpoenaed. The messenger must then add to his signature and to the date and hour of delivery the name of the person to whom the summons has been entrusted.

76. If no one of the household is willing to deliver the summons, the messenger must return it to the Judge, who shall see to it that the citation is served in some other legal manner.

77. The summons is conveyed by registered mail whenever the distance or any other serious cause makes it difficult for the messenger to serve the summons in person. The Court must then issue an order authorizing the messenger

[1] It is important to note that anyone refusing to accept a summons duly served on him is nevertheless considered as duly cited and may be declared in contempt of the Court.

CAN. 1718. Reus qui citatoriam schedam recipere recuset, legitime citatus habeatur.

to send said summons by registered mail with return receipt requested. The receipt must be kept with the record of the case.

78. When the citation is made by edict, the messenger posts the summons on the outside doors of the Courtroom, and sets down at the bottom of the edict the date and hour of the posting of said citation. Later on, when he takes it off, he writes on the edict the time during which the citation has been posted for publication.

79. The messenger always gives to the Court a written and signed report of what he has done, and this report is kept with the record of the case.

80. The same person may hold the office of sheriff and the office of messenger of the Court.

81. The messenger and the sheriff may be appointed to act in all causes coming before the Court, or may be named to act in a particular case.

82. As a rule, these officers should be laymen, unless for some special reason the appointment of an ecclesiastic is necessary.

83. The prescriptions of Canon 373 governing the appointment, suspension and removal of Notaries (*see* No. 67-footnote) apply to the Court messenger and sheriff. Therefore the Bishop appoints them; he and his successor and his Superior can suspend them; but they cannot

be suspended by the Vicar Capitular unless he obtains the approval of the Cathedral Chapter.

84. The written acts of the messenger and the sheriff are prima facie evidence of their correctness; that is, until proven to be incorrect, they will be held by the Court to be true and will be accepted as authentic.

DE CURSORIBUS ET APPARITORIBUS

CAN. 1591 § 1. Ad acta judicialia intimanda, nisi alia sit probata tribunalis consuetudo, constituantur cursores sive pro omnibus causis sive pro causa peculiari; item apparitores ad sententias ac decreta judicis, eo committente, exsecutioni mandanda.

§ 2. Eadem persona utroque officio defungi potest.

CAN. 1592. Laici ipsi sint, nisi prudentia in aliqua causa suadeat ut ecclesiastici ad id muneris assumantur; quod vero ad eorum nominationem, suspensionem et revocationem attinet, eaedem serventur regulae quae pro notariis can. 373 statutae sunt.

CAN. 1593. Acta quae hi confecerint, publicam fidem faciunt.

CAN. 1717 § 1. Citationis scheda, si fieri poterit, per Curiae cursorem tradenda est ipsi convento ubicunque is invenitur.

§ 2. Ad hoc cursor etiam fines alterius dioecesis ingredi potest, si judex id expedire censuerit et eidem cursori mandaverit.

§ 3. Si cursor personam conventam non invenerit in loco ubi commoratur, relinquere poterit citatoriam schedam alicui de ejus familia aut famulatu, si hic eam recipere paratus sit ac spondeat se reo convento quamprimum schedam acceptam traditurum; sin minus eam ad judi-

cem referat, ut transmittatur ad normam can. 1719, 1720.

Can. 1719. Si ob distantiam vel aliam causam difficulter per cursorem tradi possit reo convento scheda citatoria, poterit jussu judicis transmitti per tabellarios publicos, dummodo commendata et cum syngrapha receptionis, vel alio modo qui secundum locorum leges et conditiones tutissimus sit.

Can. 1720 § 1. Quoties, diligenti inquisitione peracta, adhuc ignoratur ubi commoretur reus, locus est citationi per edictum.

§ 2. Hoc autem fit affigendo per cursorem ad fores Curiae schedam citationis ad modum edicti per tempus prudenti judicis arbitrio determinandum et in aliqua publica ephemeride eam inserendo; si vero utrumque fieri nequeat, alterutrum sufficiet.

Can. 1721 § 1. Cursor, cum in manu rei conventi citationis schedam relinquit, debet eam subsignare, adnotatis die et hora qua reo tradita est.

§ 2. Idem peragat si eam relinquat in manibus alicujus de familia aut famulatu rei conventi, addito insuper nomine personae cui schedam tradidit.

§ 3. Si citatio fiat per edictum, cursor in edicti calce signet qua die et hora edictum affixum ad fores Curiae fuerit et quamdiu affixum manserit.

§ 4. Si reus receptionem schedae recuset, cursor schedam ipsam subsignatam, addita die et hora recusationis, judici remittat.

Can. 1722 § 1. Cursor quae peregit ad judicem referat in scriptis manu propria subsignatis, quae in actis serventur.

§ 2. Si per tabellariorum officium citatio transmittatur, asservetur in actis fides ejusdem officii.

Can. 1724. Regulae superius statutae pro rei citatione, ceteris quoque judicii actibus, pro diversa tamen eorum natura, accommodandae et applicandae sunt, ut decretorum vel sententiarum denuntiationi aliisque hujusmodi.

5. THE INTERPRETER (INTERPRES)

85. If any person called to the trial does not speak the language of the place where it is held, and if the Judges and parties to the trial do not understand said person's language, an interpreter must be secured.

86. Interpreters shall be sworn according to the directions of Can. 1621 (*see* No. 91); and no person may be appointed as interpreter if either party files a legal exception to this appointment. This exception must be passed upon by the Judge prior to the interpreter's being accepted.

DE INTERPRETE

CAN. 1641. Si alicui actui processuali interveniat persona linguae loci ignara et judices ac partes linguam hujus personae propriam non intelligant, interpres adhibeatur juratus, et a judice designatus, contra quem alterutra pars legitimam exceptionem non proposuerit.

Chapter II

DUTIES, OATH, AND SANCTIONS

DUTIES OF THE MEMBERS OF THE COURT

87. The paramount obligation of every member of the Court manifestly is to perform the duties of his office to the best of his ability. It is because of his ability and qualifications that he has been chosen, and Canon Law is insistent that every office-holder shall exercise the talents which have qualified him to hold his office, and that he shall faithfully perform the duties attached to it.

88. The first obligation, therefore, of a Judge or of any member of the Court, is to grant to all applicants the administration of his office. As it is the duty of a Judge by virtue of his appointment to administer justice, he is obliged to give his services to those who are entitled to them; and Canon Law provides penalties against Judges and other members of the Court who, without reason, refuse to exercise their functions when it is their duty to do so.

Can. 1608. Judex competens parti legitime requirenti suum ministerium ne recuset, firmo praescripto can. 1625, §1.

89. The second obligation is *fairness*. Hence, the members of the Court must take great care to avoid anything which would prevent them from being impartial in the trial of a case. For this reason, in accordance with Canon 1613, a Judge, a Promoter of Justice or a Defensor Vinculi is forbidden to take part in a trial in which he is related by blood or affinity to any party litigant in the whole direct line or in the collateral line to the first or second degree.

90. In addition to consanguinity and affinity relationship, there are many other reasons why a Judge should not act in a particular case. He may be the guardian of one of the litigants, or he may be the administrator of property in which one or other of the litigants is interested; there may be ties of friendship (political or personal), or his relations with one or the other party may be inimical; he may have a personal interest in the case; he may have acted as Attorney or Procurator in the same case before; etc.

It is manifest that if any of these reasons exists, the Judge or any other member of the Court should not take part in the trial of the case.

91. However, Canon Law does not state that a judgment rendered by a Court of which such a Judge was a member would be invalid; yet it does state that a Judge or other member of the

Court under such circumstances should recuse himself, and in the event that he fails to do so, the Defensor Vinculi or the party litigants have the right to ask for his recusation on the ground of suspicion.[1]

92. As a rule, fairness makes it the duty of a Judge to act merely on the evidence presented to him, and not to become an advocate for either of the parties. Hence, when in civil cases the question presented for judicial determination is only one for the private good of the parties, the Judge must remain simply and strictly the arbiter between the opposing parties. But when the question presented involves the public good and the salvation of souls, it is the duty of the Judge to see that justice be administered to the extent of ex officio supplying proofs that either or both parties have neglected to offer. As all marriage cases involve the public good and the salvation of souls, the Judge is obligated to do all in his power to uphold the sacredness of marriage as well as the indissolubility of the marriage bond. Therefore, when it is apparent that all the proof which should have been offered has not been offered, it is the Judge's ex officio duty to procure and offer such proof.

Can. 1613 § 1. Judex cognoscendam ne suscipiat causam, in qua ratione consanguinitatis vel affinitatis in quolibet gradu lineae rectae et in primo et secundo gradu

[1] See Can. 1614 and 1615.

lineae collateralis, vel ratione tutelae et curatelae, intimae vitae consuetudinis, magnae simultatis, vel lucri faciendi aut damni vitandi, aliquid ipsius intersit, vel in qua antea advocatum aut procuratorem egerit.

§ 2. In iisdem rerum adjunctis ab officio suo abstinere debent justitiae promotor et defensor vinculi.

CAN. 1618. In negotio quod privatorum solummodo interest, judex procedere potest dumtaxat ad instantiam partis; sed in delictis, et in iis quae publicum Ecclesiae bonum aut animarum salutem respiciunt, etiam ex officio.

CAN. 1619 § 1. Si actor pro re sua probationes quas afferre posset, non afferat, vel reus exceptiones sibi competentes non opponat, judex ne suppleat.

§ 2. Si vero agatur vel de publico bono vel de animarum salute, eas supplere potest et debet.

93. *Speedy trials.* Unnecessary delays should be prevented, and it is the duty of the Judges and the members of the Court, while safeguarding the rights of the parties, to expedite all trials.

A case in the Court of First Instance should be completed within two years, and in the Court of Second Instance within one year.

CAN. 1620. Judices et tribunalia curent ut quamprimum, salva justitia, causae omnes terminentur, utque in tribunali primae instantiae ultra biennium non protrahantur, in tribunali vero secundae instantiae ultra annum.

94. *Secrecy.* The proper and conscientious administration of justice binds the members of the Court to secrecy concerning all matters which are presented to them officially. The extent of the secrecy which must be maintained is pro-

vided for by the prescriptions of Canon Law or by diocesan statutes.

95. Where a revelation of any of the facts in a trial would be prejudicial to any of the parties concerned in the controversy or connected with it, the officers of the Court are obligated not to reveal these facts.

96. All the officers present at the meeting in which final judgment is to be rendered, as well as the Judges themselves, are bound in a special manner to keep as an inviolable secret the opinions of the Judges and all discussions by the Board of Judges after the submission of the case for their decision and prior to the pronouncement of the final sentence.

CAN. 364 § 2, 3°. Debent secretum servare intra fines et secundum modum a jure vel ab Episcopo determinatum.

CAN. 1623 § 1. In judicio criminali semper, in contentioso autem si ex revelatione alicujus actus processualis praejudicium partibus obvenire possit, judices et tribunalis adjutores tenentur ad secretum officii.

§ 2. Tenentur etiam semper ad inviolabile secretum servandum de discussione quae in tribunali collegiali ante ferendam sententiam habetur, tum etiam de variis suffragiis et opinionibus ibidem prolatis.

§ 3. Imo quoties causae vel probationum natura talis sit ut ex actorum vel probationum evulgatione aliorum fama periclitetur, vel praebeatur ansa dissidiis, aut scandalum aliudve id genus incommodum oriatur, judex poterit testes, peritos, partes earumque advocatos vel procuratores jurejurando adstringere ad secretum servandum.

97. *Integrity.* The Judges and all the members of the Court are prohibited from accepting gifts of any kind which might be connected directly or indirectly with the cause on trial.

This law was manifestly made in order to prevent bribery or even the appearance of bribery.

CAN. 1624. Judex et omnes tribunalis administri, occasione agendi judicii, munera quaevis acceptare prohibentur.

OATH OF OFFICE

98. The Judges and other officers of the Court are bound to the fulfillment of the foregoing principal duties by the sanctity of their solemn oath of office.

An oath, in general, is defined as the calling upon God to witness the truth of a statement made. An oath of office is the invocation of God's Holy Name as a witness by the appointed officer that he will faithfully perform his duty impartially and without fear or favor.

99. The Officialis, Vice Officials, Synodal Judges, Auditors, Prosecuting Attorney, Defensor Vinculi, Secretary, Court Messengers, Sheriffs, all of whom are members of the Diocesan Curia, must as such, before assuming their official duties, take the oath of office in presence of the Bishop. (*See* Canon 363 § 2.)

100. Should any person other than the regular members of the Court act in any official capacity

in connection with the Court, such person, prior to the beginning of the trial, must take the oath of office. This oath is administered by the Ordinary or the Judge who has selected the officer, or by some ecclesiastic delegated by either of them to administer the oath.

101. Oaths as provided in the foregoing sections must be taken personally, and cannot be given by procuration.

CAN. 364 § 2. Nominati vero debent:

1°. In manibus Episcopi jusjurandum praestare de munere fideliter exercendo, quavis personarum acceptione posthabita.

CAN. 1316 § 1. Jusjurandum, idest invocatio Nominis divini in testem veritatis, praestari nequit, nisi in veritate, in judicio et in justitia.

§ 2. Jusjurandum quod canones exigunt vel admittunt, per procuratorem praestari valide nequit.

CAN. 1621 § 1. Excepto Episcopo qui se potestatem judiciariam exerceat, omnes qui tribunal constituunt aut eidem opem ferunt, jusjurandum de officio rite et fideliter implendo coram Ordinario vel coram judice a quo electi sunt, vel coram viro ecclesiastico ab alterutro delegato, praestare debent: idque ab initio suscepti officii, si sint stabiles, aut antequam causa agatur, si pro peculiari aliqua causa sint constituti.

102. *Manner of Taking the Oath.* Whenever an oath is taken, it must be preceded by the invocation of the Holy Name of God. Priests, while taking the oath, should place their right hand upon their breast; the rest of the faithful

should place their right hand upon the book of the Gospels.

Form 1 may be used as the oath of office by the members of the Court.

CAN. 1622 § 1. Quotiescumque jusjurandum praestatur sive a judicibus aut tribunalis administris, sive a partibus, testibus, peritis, semper emitti debet praemissa divini Nominis invocatione et a sacerdotibus quidem tacto pectore, a ceteris fidelibus, tacto Evangeliorum libro.

§ 2. Judex partem, testem aut peritum ad jusjurandum recipiens, eum regulariter commonefaciat tum de sanctitate actus et de gravissimo delicto quod admittunt jurisjurandi violatores, tum etiam de poenis, quibus obnoxii fiunt qui falsum in judicio jurati affirmant.

§ 3. Jusjurandum secundum formulam a judice probatam praestari debet coram eodem judice aut ejus delegato, adstante utraque aut alterutra parte, quae interesse jurisjurandi praestationi velit.

PENAL SANCTIONS

103. The sacredness of the administration of justice is not only safeguarded by the official oath which every member of the Court is obliged to take, but also by penalties provided for anyone who fails either by omission or commission to perform his duties.

Competent Judges who refuse to act, incompetent Judges who rashly accept the determination of a case over which they have no jurisdiction, those who by culpable negligence or fraud nullify some act in the proceedings by which others are injured, those who are guilty of

injustice, causing damage to any of the litigants, are obliged to make restitution.

104. In addition to making restitution, a Judge guilty of any of the foregoing offenses is subject to be punished by the local Ordinary, either upon the demand of the parties or ex officio. The penalty should be proportionate to the gravity of the offense, and the offending person may even be deprived of his office.

105. If the guilty Judge is a Bishop, the penalty is imposed by the Apostolic See.

106. The Judges who have been guilty of violating the law of secrecy or of communicating in any way the secret proceedings of the Court to outsiders, shall be punished with a pecuniary fine, together with other penalties imposed according to the seriousness of their offense. They may, furthermore, suffer the loss of their office. Where particular statutes provide certain penalties for offenses of this character, even be those penalties more severe, they must be imposed.

107. Likewise, the officers and assistants of the Court who fail in the discharge of their duties are subject to the same penalties.

Can. 1625 §1. Judices qui cum certe et evidenter competentes sunt, jus reddere recusant, vel qui temere se competentes declarant, vel qui ex culpabili negligentia aut dolo actum nullum cum aliorum detrimento vel injustum ponunt aut aliud litigantibus damnum inferunt,

tenentur de damnis et ab Ordinario loci vel, si de Episcopo agatur, a Sede Apostolica, ad instantiam partis aut etiam ex officio, congruis poenis pro gravitate culpae puniri possunt, non exclusa officii privatione.

§ 2. Judices qui secreti legem violare vel acta secreta cum aliis quoquo modo communicare praesumpserint, puniantur mulcta pecuniaria aliisque poenis, privatione officii non exclusa, pro diversa reatus gravitate, salvis peculiaribus statutis, quibus graviores poenae praescribantur.

§ 3. Eisdem sanctionibus subsunt tribunalis officiales et adjutores, si officio suo, ut supra, defuerint, quos omnes etiam judex punire potest.

Chapter III

THE JURISDICTION OF THE COURT

108. As a general rule, all suits must be filed in the Court having jurisdiction over the defendant, according to the maxim "Actor sequitur forum rei."

109. If more than one Court has jurisdiction over the defendant, the suit may be filed, at the plaintiff's option, in any one of them.

110. According to Canon Law the competency or jurisdiction of a Court is determined by the several causes specified in Canons 1561-1568; but it is necessary for us to consider only two of these causes, as the others are not applicable to marriage cases. These two causes are the domicile of the parties and the "locus contractus."

111. Canon 1561 provides that any person may be made a defendant in a suit before the Court of the place in which he has his domicile or quasi-domicile, even though he be absent therefrom.

112. According to Canon 1565, any party interested in a contract may be sued upon it in

the Court of the place in which the contract was entered into.

113. Canon 1964, applying the two foregoing general rules to marriage cases, provides as follows:

1. All matrimonial cases not reserved to the Holy See may be tried by the Matrimonial Court of the diocese in which the marriage was celebrated. This applies whether one or both of the parties to the marriage are Catholics.

2. When both parties are Catholics, the suit may also be filed in the Matrimonial Court of the diocese in which the defendant has his or her domicile or quasi-domicile.

3. When either of the parties is a non-Catholic, the domicile or quasi-domicile of the Catholic party to the marriage controls the jurisdiction of the Court; that is to say, the suit may be filed in the Court of the diocese in which the Catholic party has his or her domicile or quasi-domicile.

DE FORO COMPETENTI

CAN. 1559 § 1. Nemo in prima instantia conveniri potest, nisi coram judice ecclesiastico qui competens sit ob unum ex titulis qui in can. 1560-1568 determinantur.

§ 3. Actor sequitur forum rei; quod si reus multiplex forum habeat, optio fori actori conceditur.

CAN. 1561 § 1. Ratione domicilii vel quasi-domicilii quilibet conveniri potest coram Ordinario loci.

§ 2. Ordinarius autem domicilii vel quasi-domicilii jurisdictionem in subditum, quamvis absentem, habet.

CAN. 1565 § 1. Ratione contractus pars conveniri potest coram Ordinario loci in quo contractus initus est vel adimpleri debet.

CAN. 1964. In aliis causis matrimonialibus judex competens est judex loci in quo matrimonium celebratum est aut in quo pars conventa vel, si una sit acatholica, pars catholica domicilium vel quasi-domicilium habet.

According to a decision of the Holy See, dated January 27, 1928:

1. A non-Catholic may not, as a rule, become plaintiff in a marriage case. If, however, a non-Catholic should, for special reasons, be admitted as plaintiff, the case may not be judged by a Diocesan Court, but must be referred by the Ordinary to the Holy Office, as is done in cases of matrimonium ratum non consummatum;

2. Whenever a marriage case is referred to the Holy See, either in appeal or in first instance, the Holy Office alone has jurisdiction if one of the parties is a non-Catholic;

3. The decision of the Holy See does not seem to affect the jurisdiction of the Diocesan Court in cases foreseen by Can. 1990; for in these cases there is no real trial, and therefore no "actor" in the strict sense of the word.

DE COMPETENTIA IN CAUSIS MATRIMONIALIBUS

DUBIA

Propositis huic Sacrae Congregationi Sancti Officii sequentibus dubiis:

I. Utrum in causis matrimonialibus *acatholicus*, sive baptizatus sive non baptizatus, *actoris* partes agere possit.

II. Utrum in quibuslibet causis matrimonialibus inter partem catholicam et partem acatholicam, sive baptizatam sive non baptizatam, quocumque modo ad Sanctam Sedem delatis, Suprema Sacra Congregatio Sancti Officii exclusivam habeat competentiam.

Feria, IV, die 18 januarii 1928

Emi ac Revmi Dni Cardinales rebus fidei et morum tutandis praepositi, praehabito RR. DD. Consultorum voto, respondendum decreverunt:

Ad I: *Negative,* seu standum Codici J.C., praesertim can. 87. Siquidem autem speciales occurrant rationes ad admittendos acatholicos ut *actores* in hujusmodi causis, recurrendum ad Supremam Congregationem Sancti Officii in singulis casibus.

Ad II: *Affirmative,* habita praesertim ratione can. 247 § 3, et salvo praescripto can. 1557 § 1. 1°.

Et feria V, die 26 ejusdem mensis, etc.

Chapter IV

REGULATIONS TO BE OBSERVED BY THE COURT

1. ORDER OF PROCEDURE

114. Cases shall be tried in the order in which they are filed, unless for a grave reason it is necessary to give a particular case preference. In such an event, the Judge or Tribunal shall render a decree ordering that preference be given.

Can. 1627. Judices et tribunalia tenentur causas ad se delatas eo ordine cognoscere quo fuerunt propositae, nisi aliqua earum celerem prae ceteris expeditionem exigat, quod quidem peculiari decreto a judice seu a tribunali statuendum est.

2. DELAYS

115. All trials should be conducted expeditiously and terminated within a reasonable time. Delays, however, are frequently necessary and should be granted; for example, to allow the parties to present their witnesses, to prepare their defense, etc.

116. Therefore, an extension of time is given

either by the law (legal delays—fatalia legis), or by the Judge himself (judiciary delays—termini judiciales), and, under certain circumstances, may be agreed upon by the parties themselves (conventional delays—termini conventionales).

117. The legal delays are those within which time certain rights must be exercised, which, after the lapse of that specified time, cease to exist: for instance, the ten days allowed for taking the appeal. These legal delays may not be extended.

118. When a delay for any particular action has been granted by the Judge himself, or has been agreed upon by the parties, the Judge, before the expiration of the time granted, may for a sufficient reason extend the time previously granted or agreed upon, provided, however, that the parties shall be heard concerning the extension of time, or shall file a petition for said extension.

119. It is the duty of the Judge, however, to cause the trial to be proceeded with without unnecessary interruptions; and he should not permit the case to be unnecessarily lengthened by the granting of delays.

Can. 1634 § 1. *Fatalia legis* quae dicuntur, idest termini perimendis juribus a lege constituti, prorogari non possunt.

§ 2. Termini autem judiciales et conventionales, ante

eorum lapsum, poterunt, justa intercedente causa, a judice, auditis vel petentibus partibus, prorogari.

§ 3. Caveat tamen judex ne nimis diuturna lis fiat ex prorogatione.

CAN. 1635. Si dies, pro actu judiciali indicta, sit feriata nec in decreto judicis dicatur expresse tribunal vacaturum nihilominus causis cognoscendis, terminus intelligitur prorogatus ad primam sequentem diem non feriatam.

3. PLACE FOR HOLDING COURT

120. A Bishop may establish or locate a place in which trials shall be held anywhere in his diocese, provided the hall or room so selected be not in a place exempted by law. Yet, he should establish in his episcopal city a court-room or judgment hall which should be the usual or ordinary place for conducting these trials.[1]

121. The crucifix should be placed conspicuously within this court-room or judgment hall, and a copy of the Gospels should be on the Judge's desk or table.

CAN. 1636. Quamvis Episcopus in quolibet suae dioecesis loco, qui non sit exemptus, jus habeat erigendi tribunal, nihilominus penes suam sedem aulam statuat,

[1] If a Judge has been expelled from his territory, or is prevented from exercising his functions there, he may maintain his jurisdiction outside of his own territory and render sentence. It is his duty, however, to notify the local Ordinary of this fact. Failure to notify the Ordinary does not affect the validity of the trial, as this notification is merely given as an act of courtesy or of respect.

CAN. 1637. Judex e territorio suo vi expulsus vel a jurisdictione ibi exercenda impeditus, potest extra territorium jurisdictionem suam exercere et sententiam ferre, certiore tamen hac de re facto loci Ordinario.

quae sit ordinarius judiciorum locus: ibique Crucifixi imago emineat, et adsit Evangeliorum liber.

4. COURT SESSIONS

122. Ordinaries should designate the time when the sessions of Court will be held. The days and hours for the holding of Court should be selected as conveniently as possible for those who are compelled to attend.

123. In emergency cases, however, when the matter is serious and delay would be dangerous, the faithful may at any time seek the ministrations of the Court to protect either their own private rights or the common good.

CAN. 1638 § 1. In unaquaque dioecesi Ordinarius publico decreto dies et horas definiri curet, pro loci ac temporum adjunctis opportunas, quibus tribunal adiri regulariter possit, et ab eo justitiae administratio exigi.

§ 2. Justa tamen de causa, et quoties periculum sit in mora, fas est fidelibus quovis tempore judicis ministerium in sui juris vel boni publici tutelam invocare.

5. LEGAL HOLIDAYS

124. All Sundays, holy-days of obligation, and the last three days of Holy Week are legal holidays. On legal holidays Court may not be held, citations may not be issued or served, audiences may not be given, the testimony of parties or witnesses may not be taken, proofs and documents may not be received, decrees or sentences may not be issued or published or executed.

None of the foregoing may be done legally on a holiday unless necessity, Christian charity or the public welfare requires that an exception should be made; and an exception may be made only by the Judge specifically announcing in each individual case what act or acts must be done on the aforesaid forbidden days.

CAN. 1639 § 1. Dies festi de praecepto, et ultimi tres dies hebdomadae sanctae feriati habeantur; et in iis citationes intimare, audientias habere, partes et testes excutere, probationes assumere, decreta et sententias ferre, denuntiare et exsequi vetitum est, nisi necessitas, christiana caritas, aut bonum publicum aliud postulent.

§ 2. Judicis autem est in singulis casibus statuere et denuntiare, an et quae acta supra dictis diebus expleri debeant.

6. PERSONS TO BE ADMITTED TO THE COURT-ROOM

125. While the trial is in progress, only those persons shall be admitted to the court-room whose presence is deemed necessary by the Judge. All others shall be excluded.

CAN. 1640 § 1. Dum causae coram tribunali aguntur, extranei ab aula arceantur et ii tantummodo adsint, quos ad processum expediendum judex necessarios esse judicaverit.

7. PENALTIES FOR CONTEMPT OF COURT

126. The Judge is vested with the power of maintaining order in the court-room, and of compelling respect and obedience to the Court

by all persons present or taking part in the trial. He even has the power of immediately inflicting a penalty upon any person who has been guilty of contempt of Court in his presence.

His power of punishing contempt extends to depriving lawyers and procurators of the right of acting or appearing before the Ecclesiastical Courts in other cases.

CAN. 1640 § 2. Omnes, judicio assistentes, qui reverentiae et obedientiae tribunali debitae graviter defuerint, judex, etiam illico et incontinenti si coram tribunali sedente in id quis peccaverit, potest censuris quoque aliisve congruis poenis ad officium reducere, advocatos praeterea et procuratores etiam jure alias causas apud tribunalia ecclesiastica pertractandi privare.

8. RECORD OF THE CASE

127. The judicial file or record of the case contains:

1. The *acta causae,* or all proceedings affecting or concerning the merits of the case; such as, the testimony of witnesses, documentary proofs, defenses, sentences, etc.

2. The *acta processualia,* or those proceedings concerning the conduct of the trial and showing whether or not Canon Law has been followed in the progress of said trial; such as, the issuing and delivering of summonses, the taking of or the refusal to take the oath by the witnesses, the minutes of the sessions, etc.

128. The entire record must be in written

form, and should be written in Latin, unless there is a good reason for not doing so. However, the questions and answers of the party litigants and witnesses and the documentary proofs must be written in the vernacular.

129. Every sheet of the record must be numbered and must bear the signature of the Secretary and the seal of the Court.

130. The Secretary and the Judge (or the President of the Collegiate Tribunal) must sign every proceeding when it is completed, interrupted or adjourned.

131. Whenever the signature of the parties or witnesses is required on any document, if these parties or witnesses cannot sign their names, or refuse to do so, that fact must be noted on the act, and the Judge and the Secretary must testify that the document has been read, word for word, to the party or witness, and that said party or witness has been unable or has refused to sign his name.

132. After the trial is terminated, the documentary evidence must be returned to the party filing same.

133. The Court record (testimony of parties and witnesses, pleadings, minutes, briefs, etc.) remaining with the Court after the return of the documents to the parties should be deposited in the diocesan archives, either public or secret, according to the nature of its contents.

134. The Notaries, the Secretaries and the Chancellor are forbidden to give a copy of any part of this record to any person unless a written order of the Court is first obtained.

135. Anonymous letters and letters signed but containing slanderous statements must be destroyed.

Can. 1642 § 1. Acta judicialia, tum quae meritum quaestionis respiciunt, seu *acta causae*, ex gr., sententiae et cujusque generis probationes, tum quae ad formam procedendi pertinent, seu *acta processus*, ex. gr., citationes, intimationes, etc., scripto redacta esse debent.

§ 2. Nisi justa causa aliud suadeat, quoad ejus fieri potest, lingua latina redigantur; sed interrogationes et responsiones testium, aliaque similia, lingua vernacula confici debent.

Can. 1643 § 1. Singula folia processus numerentur; et actuarii subscriptio cum sigillo tribunalis apponatur in unoquoque folio.

§ 2. Singulis actis completis vel interruptis seu ad aliam sessionem remissis, apponatur subscriptio actuarii et judicis vel tribunalis praesidis.

§ 3. Quoties in actis judicialibus partium aut testium subscriptio requiritur, si pars aut testis hanc facere nequeat vel nolit, id in ipsis actis adnotetur, simulque judex et actuarius fidem faciant actum ipsum de verbo ad verbum parti aut testi perlectum fuisse, et partem aut testem vel non potuisse vel noluisse subscribere.

Can. 1645 § 1. Judicio expleto, documenta partibus restitui debent, nisi in criminalibus, bono publico ita exigente, judex aliquod retinendum censuerit.

§ 2. Documenta omnia, quae apud tribunal manent, in archivo Curiae deponantur sive publico sive secreto, prout eorum natura exigit.

§ 3. Notarii, actuarii et cancellarius sine judicis man-

dato tradere prohibentur exemplar actorum judicialium et documentorum quae sunt processui acquisita.

§ 4. Anonymae epistolae quae nihil ad causae meritum conferunt, et etiam subscriptae quae sint certo calumniosae, destruantur.

9. THE EXPENSES

136. As it is impossible for any Court to function without incurring some expenses, Canon Law requires these expenses to be paid by the parties to the litigation, unless, due to circumstances, the parties are released by the Court from the necessity of paying all or part of the costs of the trial.[1]

137. Each party must pay the costs incurred in his or her behalf during the trial, such as:

1. The costs of the operation of the Court itself, viz., the expenses of the Secretary or of any other officer of the Court in sending notices and citations, making copies, taking the testimony of witnesses, etc.

2. The witness fees, amounts fixed by the Court to compensate witnesses for loss of time, traveling expenses, etc., incurred by them in attending the trial.

3. The fees of experts, amounts fixed by the Court as compensation for their services and attendance at the trial.

138. Whenever the Court acts on its own motion (ex officio), the plaintiff is charged with the

[1] See Can. 1914, 1915 and 1916.

expenses of said action. This is true not only in the main action, but also in all incidental proceedings which may become necessary in the progress of the trial.

139. In order that these expenses may be provided for, it is prudent for the Court to demand that each party make a sufficient cash deposit to cover his or her expenses in the trial of the case. In the event that the cash deposit cannot be conveniently made, the party unable to make it should furnish a bond with a surety that the amount will be forthcoming when required.

The Holy Roman Rota invariably follows this practice, and prudence requires that our Diocesan Courts should follow the same course. Experience has shown that frequently the defendant takes no interest in the trial, and refuses to contribute in any way to the expenses of it. Hence it follows, that the Court is usually called upon to act ex officio in the defendant's place, and that the plaintiff must defray all of the expenses. As these acts of the Court ex officio are from the nature of the circumstances usually against the plaintiff, it is obvious that the plaintiff may not care to pay the expenses of them. Therefore, in order to avoid unpleasant difficulties, a deposit sufficiently large to insure the payment of the expenses incurred by the Court should be demanded of the plaintiff before the commencement of the trial. This deposit should

be made with the permanent Secretary of the Court.

140. Canon 1626 provides also that when it is foreseen that the plaintiff, in the event the judgment is against him, will not obey the Court's sentence and that therefore the rights of the defendant will be prejudiced, the Judge may either ex officio or upon the demand of the defendant require the plaintiff to give bond with surety that the costs of the defendant will be paid if so ordered by the Court.

141. The Provincial Council or the Bishops of the Province in a general meeting should establish a schedule of costs and should determine the amount to be paid by the parties to cover the following charges:

1. The general expenses of the Court;
2. The fees for lawyers and Procurators of the parties;
3. The translations and copies of documents;
4. The examination and verification of documents;
5. The copies of documents taken from the archives.

142. According to Canon 1910, in civil cases (matrimonial cases are included in this class) as a general rule the party *cast in judgment,* that is, the one against whom the judgment is rend-

ered, is required to refund to the party who has secured judgment in his favor, the costs expended by him in the trial of the case, and also the incidental costs which may have occurred in the progress of the trial.

143. However, Canon 1911 provides that where the party litigants are related by affinity, or for any other reasonable cause, the Judge may in his discretion prorate the costs between both litigants.

In cases in which the sentence of the Court declares the marriage to be null and void, as both parties are equally benefited by the ascertainment of the truth, it appears to be just and proper that, when possible, the costs should be divided between them.

144. If, as frequently occurs, the plaintiff has been caused unnecessary expenses by the defendant refusing to do his or her duty in the progress of the trial, such as by refusing to appear, to present witnesses, etc., it is the Judge's duty to condemn the defendant to indemnify the plaintiff for such costs.

145. Likewise, if the plaintiff has rashly brought the proceedings and thus caused damage to the defendant, the Judge must condemn him to indemnify the defendant for such damages.

146. The final sentence must always include the decision of the Court concerning the ex-

penses of the trial, naming the litigant who must pay them, or prorating these costs between the litigants. (Canon 1873 § 1, No. 4).

147. *N.B.* The decisions of the Ecclesiastical Courts are always binding in conscience upon the parties against whom the decision is rendered. And while these Courts do not possess, as a rule, the means of enforcing their decision such as the State or Civil Courts possess, and therefore cannot compel a party litigant to pay over or refund to the other party the amount which the decision of the Court condemns him so to do, yet the party so condemned is under a moral obligation to obey the sentence and is obligated in conscience and before God the same as in any other debt of justice.

148. If any party is aggrieved by being taxed with costs or by the amount of the costs, he has the right to petition the Court that has rendered the judgment to review the question of costs. This petition must be presented within ten days from the rendition of the judgment. The Court has the right to change that part of the judgment relating to costs if in its opinion it should be done.

149. When a case is appealed, the Appellate Court must always consider the correctness of the taxing of the costs by the lower Court, and may modify it in its discretion.

DE EXPENSIS JUDICIALIBUS

CAN. 1908. In causis contentiosis possunt partes adigi ad aliquid solvendum, titulo expensarum judicialium, nisi ab hoc onere eximantur ad norman can. 1914-1916.

CAN. 1909 § 1. Concilii Provincialis, vel conventus Episcoporum est taxarum notulam ac regulam statuere in qua praefiniatur quid partes debeant pro expensis judicialibus; quae sit retributio pro advocatorum et procuratorum opera a partibus solvenda; quae mercedis mensura pro versionibus et transcriptionibus; pro his examinandis et fide facienda de earum fidelitate; itemque pro exscribendis ex archivo documentis.

§ 2. Potest autem judex pro suo prudenti arbitrio exigere ut pecunia pro judicialibus expensis, pro indemnitate testium, pro honorariis peritorum debita a parte quae petit vel, si judex ex officio agat, ab actore antea deponatur penes tribunalis cancellariam aut saltem cautio praestetur pecuniam deinde solutum iri.

CAN. 1626. Cum judex praevidet actorem probabiliter spreturum esse sententiam ecclesiasticam si forte haec ipsi sit contraria, et idcirco conventi juribus non satis consultum iri, potest, ad ejusdem conventi instantiam vel etiam ex officio, actorem adigere ad congruam cautionem praestandam pro ecclesiasticae sententiae observantia.

CAN. 1910 § 1. Victus victori judiciales expensas regulariter reficere tenetur tum in causa principali tum in incidenti.

§ 2. Si actor vel reus temere litigaverit, etiam ad damnorum refectionem damnari debet.

CAN. 1911. Si actor vel reus partialiter tantum succubuerit, aut lis agitata fuerit inter consanguineos vel affines, aut de quaestione valde ardua actum fuerit, aut quacunque alia justa et gravi de causa, poterit judex pro suo prudenti arbitrio ex toto vel ex parte inter litigantes expensas compensare; idque debet exprimere in ipso sententiae tenore.

CAN. 1873 §1. Sententia debet . . . statuere de litis expensis.

CAN. 1913 § 1. A pronuntiatione circa expensas non datur distincta appellatio; sed pars quae se gravatam putat, oppositionem intra decem dies facere potest coram eodem judice: qui de hac re cognoscere denuo poterit, et taxationem emendare ac moderari.

§ 2. Appellatio a sententia circa causam principalem secumfert appellationem a pronuntiatione circa expensas.

Chapter V

THE PARTY LITIGANTS

1. THE PLAINTIFF AND THE DEFENDANT

150. In every trial there is a Plaintiff (Actor) and a Defendant (Reus or Pars conventa).

The plaintiff is the person who presents a complaint before the Court; and in our case, the person who attacks the validity of the marriage.

The defendant is the person against whom the complaint is brought, or who opposes the contentions of the plaintiff.

151. When both the husband and the wife ask the Court for a declaration of nullity of their marriage, they are co-plaintiffs, and the Defensor Vinculi is the defendant ex officio.

If, on the contrary only one of the parties attacks the marriage, the other party becomes co-defendant with the Defensor Vinculi.

152. According to Canon 1971, in all marriage cases the right to attack the validity of the marriage is the privilege of either one or both of the married parties.

When the impediment used as a reason for impugning the marriage is by nature a public

impediment, that is to say, when it can be proven in Court,[1] the Promoter of Justice also has the right to attack the validity of the marriage.

No other persons, even though blood relations, have the right to attack a marriage, though they have the right to denounce its nullity either to the Ordinary or to the Promoter of Justice.

DE JURE ACCUSANDI MATRIMONIUM

CAN. 1971 § 1. Habiles ad accusandum sunt:
1°. Conjuges, in omnibus causis separationis et nullitatis, nisi ipsi fuerint impedimenti causa;
2°. Promotor justitiae in impedimentis natura sua publicis.
§ 2. Reliqui omnes, etsi consanguinei, non habent jus matrimonia accusandi, sed tantummodo nullitatem matrimonii Ordinario vel promotori justitiae denuntiandi.

2. THE PROCURATOR

153. Canon 1655 § 3 permits the parties to appear and act for themselves in person. This, however, would be impractical in most cases, and a litigant in the Matrimonial Courts should always be represented by a Procurator who is familiar with the Court's procedure.

154. A Procurator is one who acts in the capacity of Attorney in fact for the plaintiff or the defendant and represents him in Court, filing all papers and documents, attending with his client

[1] CAN. 1037. Publicum censetur impedimentum quod probari in foro externo potest; secus est occultum.

the sessions of the Court when his client's presence is required, and directing his every action.

155. After the final judgment, in cases where an appeal should be taken, it is the right and duty of the Procurator to attend to the appeal, unless the party whom he represents specifically objects to his doing so.

156. N. B.—Canon Law makes a distinction between a Procurator and a Lawyer. The Procurator acts in the place and stead of the litigant himself; whereas the lawyer is concerned with the presentation to the Court of the legal aspects of the case. The Procurator, however, may also act as lawyer, and when he does so, the provisions specifically relating to lawyers apply to him.

157. As a rule, each litigant is allowed but one Procurator. The Procurator cannot delegate his authority to another person, unless specially permitted to do so by the party whom he represents.

158. The Procurator must be a Catholic, of the full age of majority, and of good reputation. A non-Catholic is not allowed to act as Procurator unless an exception is made in his case because of necessity. Neither is a Religious permitted to act as Procurator in marriage cases.

159. Any person possessing the qualifications mentioned above may be appointed Procurator, and it is not necessary that his appointment be approved by the Ordinary.

160. Before the Court will recognize a Procurator, he must file with the Court his written authority to represent the party litigant; this mandate must be signed by the party himself and must also bear the name of the place where, and the day, month, and year in which it was given.

161. If the litigant cannot write, this fact must be stated in the mandate appointing the Procurator, and the mandate must be signed either by the parish priest or by an ecclesiastical notary or by two witnesses.

162. The mandate must be filed and kept with the other documents of the case.

163. The party appointing the Procurator may discharge him, but must notify him of his dismissal, and must, in cases where a fee is due him for services rendered, pay the same. If issue has already been joined, the Court and the opposing party must also be notified.

164. The Court has the authority to remove the Procurator for good cause. This may be done ex officio or upon the complaint of the opposing party.

165. Procurators who, on account of bribes or for any other reason, betray their trust must be removed, condemned to repair the damage done, and either fined or punished in some other suitable way.

DE PROCURATORE

CAN. 1655 § 3. Praeter hos casus pars libere potest advocatum et procuratorem constituere, sed potest quoque in judicio per se ipsa agere et respondere, nisi judex procuratoris vel advocati ministerium necessarium existimaverit.

CAN. 1644 § 2. Lata definitiva sententia, jus et officium appellandi, si mandans non renuat, procuratori manet.

CAN. 1656 § 4. Utrumque munus, procuratoris et advocati, etiam in eadem causa et pro eodem cliente eadem persona exercere potest.

§ 1. Unicum quisque potest eligere procuratorem, qui nequit alium sibimet substituere, nisi expressa facultas eidem facta fuerit.

§ 2. Quod si, justa causa suadente, plures ab eodem deputentur, hi ita constituantur, ut detur inter ipsos locus praeventioni.

CAN. 1657 § 1. Procurator et advocatus esse debent catholici, aetate majores, bonae famae; acatholicus non admittitur, nisi per exceptionem et ex necessitate.

§ 3. Religiosus admitti potest, nisi aliud in constitutionibus caveatur, in causis tantum in quibus vertitur utilitas suae religionis, de licentia tamen Superioris.

CAN. 1658 § 1. Quilibet pro lubitu a parte potest eligi et deputari procurator, dummodo secundum praecedentem canonem idoneus sit, quin opus sit ut Ordinarii approbatio antecesserit.

CAN. 1659 § 1. Procurator ne prius a judice admittatur quam speciale mandatum ad lites scriptum, etiam in calce ipsius citationis, mandantis subscriptione munitum, et locum, diem, mensem et annum referens, apud tribunal deposuerit.

§ 2. Quod si mandans scribere nesciat, hoc ipsum ex scriptura constet necesse est, et parochus vel notarius Curiae vel duo testes, loco mandantis, mandatum subsignent.

CAN. 1660. Mandatum procurationis asservari debet in actis causae.

CAN. 1664 § 1. Advocati et procuratores possunt ab eo a quo constituti sunt, removeri, salva obligatione solvendi honoraria ipsis debita; verum ut remotio effectum sortiatur, necesse est ut ipsis intimetur, et, si lis jam contestata fuerit, judex et adversa pars certiores facti sint de remotione.

CAN. 1663. Tum procurator tum advocatus possunt a judice, dato decreto, repelli sive ex officio sive ad instantiam partis, justa tamen de causa.

CAN. 1666. Advocati ac procuratores qui ob dona aut pollicitationes aut quamlibet aliam rationem suum officium prodiderint, ab officio repellantur, et, praeter damnorum refectionem, mulcta pecuniaria aliisve congruis poenis plectantur.

3. THE LAWYERS

166. In civil cases in which questions affecting the public good are involved, as for example marriage cases, the parties must engage a lawyer. Where a lawyer is not engaged by a party in these cases, the Court will ex officio appoint one; and even when the parties themselves have selected their lawyer, the Court has the right to appoint ex officio additional lawyers to assist in the case: for instance, when the question presents serious legal difficulties and the lawyer selected by a party is, in the opinion of the Court, not sufficiently competent to properly conduct the case.

167. The parties themselves may select more than one lawyer. As we have previously noted

(No. 156), the Procurator may also act as a lawyer.

168. The duties of the lawyer are to prepare the interrogatories, to write the briefs and make the oral arguments; in a word, to present the case to the Court.

169. The qualifications of the lawyer are the same as those required of the Procurator (No. 158). In addition, the lawyer ought also to be a Doctor of Canon Law or at least well versed in it.

170. The lawyer must be approved by the Ordinary either by being recognized as an ecclesiastical lawyer with authority to take part in any trial before the Court, or by being granted permission to act in the particular case in which the party litigant wishes to appoint him.[1]

171. The lawyer, like the Procurator, must receive a written mandate either from the party for whom he is to act or from the Judge who ex officio appoints him. This mandate or commission must be filed with the Court and becomes a part of the record of the case.

172. The lawyer may be discharged and removed for the same reasons stated concerning the Procurator (Nos. 163-165). In addition, a

[1] Since a lawyer may not practice in the Ecclesiastical Courts before obtaining the approval of the Ordinary, it is desirable that the Ordinary should approve a certain number of persons authorized to act as lawyers in all cases presented to the Court; and so, any litigant requiring the services of a lawyer may choose one from among these so approved.

(*Form 2: page 129*)

lawyer guilty of bad conduct may be prohibited from ever practicing before the Ecclesiastical Courts.

DE ADVOCATO

Can. 1655 § 1. In judicio criminali reus aut a se electum aut a judice datum semper habere debet advocatum.

§ 2. Etiam in judicio contentioso, si agatur de minoribus aut de judicio in quo bonum publicum vertitur, judex parti carenti defensorem ex officio attribuat, aut, si casus ferat, parti etiam habenti alium adjungat.

Can. 1656 § 3. Advocati autem plures simul constitui queunt.

Can. 1657 § 2. Advocatus debet praeterea esse doctor vel alioqui vere peritus, saltem in jure canonico.

Can. 1661. Advocatus, ut causae patrocinium suscipiat, habeat necesse est a parte vel a judice commissionem ad instar mandati procuratorii, de qua in actis constare debet.

PART II

PROCEDURE IN THE DIOCESAN MATRIMONIAL COURTS

Chapter I

SOLEMN TRIALS

A.

Procedure in the Diocesan Matrimonial Court Acting as a Tribunal of First Instance

I. THE PRELIMINARY PROCEEDINGS

1. APPOINTMENT OF PLAINTIFF'S PROCURATOR

173. The plaintiff must first of all appoint a procurator with sufficient knowledge of Canon Law, and qualified to properly present the case.

(*Form 3:* Appointment of Procurator, *page 130.*)

2. PLAINTIFF'S PETITION

174. The Procurator for the plaintiff shall then prepare the petition.[1]

The petition should set forth:

(1) The name of the Court to which the petition is addressed (*title*).

[1] In the cases foreseen by Can. 1707, when the plaintiff is allowed to present his petition orally, it is the duty of the Secretary of the Court to put in writing said oral petition.

(2) The existence of the matrimonial contract: name of the parties, place and time of the marriage.[1]

(3) The present addresses of the parties, together with the name and address of the plaintiff's Procurator.

(4) The existence of the diriment impediment:

(*a*) The law, or the diriment impediment according to Canon Law and invoked as the reason for the nullity of the marriage;

(*b*) The facts, or history of the case, showing that there has been really a diriment impediment in the present matrimonial contract.

(5) The right of the petitioner to litigate the validity of said marriage.

(6) The prayer of petitioner asking that said matrimonial contract be declared null and void by the Court.

(7) The petition should be signed by the Procurator; the affidavit added to the petition should be signed by the plaintiff.

(8) The date (*day, month, year*) must be given.

[1] To the petition ought to be annexed:
(1) The certificate of marriage;
(2) The certificate of baptism of plaintiff, and, if possible, of defendant.
(*Form 4:* Certified copy of an original document, page 132.)

(*Form 5:* Plaintiff's Petition, *page 133.*)
(*Form 6:* Petition "in forma pauperis," *page 136.*)

175. The Procurator shall then file the copy of the petition in the office of the Secretary of the Court.

(*Form 7:* Filing of Petition, *page 137.*)

As soon as the petition is filed, the case is entered in the docket of the Court and receives a number. All subsequent papers filed by the Procurator should bear this number.

(*Form 8:* Heading to be used on each page of the record, *page 138.*)

176. The Secretary then sends the original petition and the documents to the Officialis.

DE LIBELLO LITIS INTRODUCTORIO

CAN. 1970. Tribunal collegiale nullam causam matrimonialem cognoscere vel definire potest, nisi regularis accusatio vel jure facta petitio praecesserit.

CAN. 1706. Qui aliquem convenire vult, debet libellum competenti judici exhibere, in quo controversiae objectum proponatur, et ministerium judicis ad deducta jura persequenda expostuletur.

CAN. 1708. Libellus quo lis introducitur debet:

1°. Exprimere coram quo judice causa introducatur, quid petatur, et a quo petatur;
2°. Indicare, generatim saltem, quo jure innitatur actor ad comprobanda ea quae alleguntur et asseruntur;
3°. Subscribi ab actore vel ejus procuratore, appositis

die, mense et anno, nec non loco in quo actor vel ejus procurator habitant, aut residere se dixerint actorum recipiendorum gratia.

3. ATTEMPT AT RECONCILIATION

177. If from the known facts of the case, or from the facts appearing in the petition, there is any possibility of a reconciliation, it is the duty of the Officialis to endeavor to effect a reconciliation between the parties. He should obtain for this the assistance of the parish priest or of some other prudent and competent person.

(*Form 9:* Letter to the Parish Priest, *page 138.*)

DE RECONCILIATIONE

CAN. 1965. Si matrimonium accusatur ex defectu consensus, curet ante omnia judex ut monitionibus opportunis partem, cujus consensus deesse affirmatur, ad consensum renovandum inducat; si ex defectu formae substantialis vel ex impedimento dirimenti quod dispensari potest et solet, partes inducere studeat ad consensum in forma legitima renovandum vel ad dispensationem petendam.

4. APPOINTMENT OF THE ASSOCIATE JUDGES

178. After it has been ascertained that reconciliation is impossible, the Officialis appoints two Associate Judges, who will sit with him[1] as Judges in the case; and he will immediately

[1] In the event that the business of the Court is so great that the Officialis is unable to personally preside as Judge of said Court, he has the authority to appoint a Vice-Officialis selected from those properly qualified.

call a meeting of the Court,[1] of which meeting the Defensor Vinculi must be notified.

(*Form 10:* Order for the appointment of the Associate Judges, *page 139.*)

179. Letters of appointment are immediately sent by the Secretary of the Court to each Associate Judge, together with the plaintiff's petition and the notice of the day and hour fixed for the meeting of the Court.

(*Form 11:* Notice of appointment of Associate Judge, *page 141.*)

180. In cases where the regularly appointed Defensor Vinculi is, for any reason, unable to act, it shall be the duty of the Officialis to name and appoint a Defensor Vinculi for the particular case under consideration.

In like manner, a substitute for any of the other regularly appointed officers of the Court may be nominated by the Officialis for the particular case on trial.

Form 12 will then be the order issued by the Officialis, and this order will be followed by the letters of appointment of said officers: Form 13.

[1] CAN. 1710. Si judex continuo mense ab exhibito libello decretum non ediderit quo libellum admittit vel rejicit ad normam can. 1709, pars cujus interest instare potest ut judex suo munere fungatur; quod si nihilominus judex sileat, lapsis quinque diebus a facta instantia, poterit recursum ad Ordinarium loci, si ipse judex non sit, vel ad superius tribunal interponere ut vel judex ad definiendam causam adigatur vel alius in ejus locum subrogetur.

The substitute so appointed must take the oath of office before being admitted to perform his duty.

(*Form 1:* Oath to be taken by newly appointed officers, *page 129.*)

DE TRIBUNAL COLLEGIALI

CAN. 1576 § 1. Reprobata contraria consuetudine et revocato quolibet contrario privilegio, causae contentiosae de vinculo . . . matrimonii . . . tribunali collegiali trium judicum reservantur.

§ 3. Duos judices . . . qui una cum praeside tribunal collegiale constituunt, inter judices synodales Ordinarius, nisi pro sua prudentia aliter opportunum existimaverit, eligat per turnum.

5. NOTICE TO THE DEFENSOR VINCULI

181. The Defensor Vinculi is notified of the time and place of the meeting of the Court. His presence is requested and a copy of the petition is delivered to him. He is further requested to prepare, preferably in writing, any objection he may have to the capacity of the plaintiff, to the jurisdiction of the Court, or to the tenor of the petition.

(*Form 14:* Notice to Defensor Vinculi, *page 144.*)

6. FIRST SESSION—ACCEPTANCE OF PLAINTIFF'S PETITION

182. At the first session of the Court, the following subjects are to be considered:

(1) The capacity of the plaintiff to prosecute the case.
(2) The jurisdiction of the Court, that is, whether or not the grounds upon which relief is sought, are such as according to Canon Law may be considered in this particular Court.
(3) The contents of the petition, to see if it is in need of correction.

A convenient order of procedure for the first meeting of the Court is as follows:

(1) Reading of the order appointing the Associate Judges and the other officers of the Court who have been appointed for this particular case.[1]
(2) Appointment by the President of one of the Associate Judges to act as Ponens in the case.
(3) The Ponens shall then read to the Court the document in which the plaintiff has appointed his or her Procurator, and the petition of the plaintiff.[2]
(4) The President then requests of the Defensor Vinculi his opinion as to the capacity of the plaintiff, the jurisdiction of

[1] If it should happen, for any reason, that any of the Judges is not a Synodal or Pro-Synodal Judge, the proper oath of office should be taken by him. (*Form 1, page 129.*)

[2] The reading of the petition may be dispensed with by order of the President if copies of said petition have been previously furnished to the Judges and to the Defensor Vinculi.

the Court and the contents of the petition. It shall be the duty of the Defensor Vinculi then and there to announce his opinion on these points.

(*Form 15, page 145.*)

(5) The Judges shall then determine whether or not the petition of the plaintiff should be accepted.

(6) The petition of the plaintiff is either accepted or rejected.

(7) If accepted, the Ponens shall prepare the decree authorizing its acceptance, which decree must be signed by all the Judges.

(*Form 16:* Decree of acceptance of Plaintiff's Petition, *page 146.*)

(8) The President may then appoint an Auditor[1] whose duty it shall be to take the testimony of the parties and witnesses, to rule on the admissibility of evidence, and in a general way to conduct the proceedings of the trial until such time as the case is ready for the consideration of the Court.

(*Form 17:* Order for the appointment of an Auditor, *page 148.*)

(*Form 18:* Notice of appointment, *page 149.*)

[1] The appointment of an Auditor is not absolutely necessary. As a practical matter, however, we should suggest that it be done, as the handling of the case in the taking of testimony, etc., by the Auditor especially appointed for this case, tends to expedite the proceedings.

(9) It shall be the duty of the Secretary of the Court to reduce the minutes of the first session of the Court to writing, and these minutes should be signed by the Judges and by the other members of the Tribunal.[1]

(*Form 19:* Minutes of the First Session, *page 150.*)

CAN. 1709 § 1. Judex vel tribunal, postquam viderit et rem esse suae competentiae et actori legitimam personam esse standi in judicio, debet quantocius libellum aut admittere aut rejicere, adjectis in hoc altero casu rejectionis causis.

7. CITATION OF THE DEFENDANT

183. If the defendant's address is known, he must be cited to appear in Court to answer the allegations of the plaintiff's petition. At the same time, his right under Canon Law should be explained to him.

(*Form 20:* Citation of defendant,[2] *page 153.*)

[1] If there is not sufficient time to properly prepare the decree and to reduce the minutes of the Court's session to writing, the Ponens and the Secretary may do so after the adjournment of the session, and these documents may be presented to the Judges and the other members of the Tribunal for their signatures at the next session of the Court.

[2] In writing citations, great care should be used to follow the directions of Can. 1715; and in serving the summons, Canons 1717-1722 must be carefully observed, otherwise the citation and the proceedings following it are null and void.

Citations must be written in duplicate form, one copy to be served and the other copy to be kept with the record of the case.

CAN. 1723. Si scheda citatoria non referat quae in can. 1715 praescribuntur aut non fuerit legitime intimata, nullius momenti sunt tum citatio tum acta processus.

CAN. 1716. Citatio duplici scheda conficiatur, quarum altera remittatur reo convento, altera asservetur in actis.

If the Defendant's address is not known, he is cited by edict.

(*Form 21:* Citation by edict, *page 155.*)

The Procurator of the plaintiff is then notified that the plaintiff's petition has been accepted, the jurisdiction of the Court determined, and that the defendant has been cited to appear and give or file his answer.

(*Form 22:* Notice to plaintiff's Procurator, *page 156.*)

If the plaintiff has not previously selected and appointed a lawyer, he should do so upon receipt of the notice of the acceptance of his petition by the Court.

Form 23 may be used for the appointment of a lawyer already approved and recognized by the Ordinary as an ecclesiastical lawyer with authority to take part in any trial before the Court.

When the person selected as a lawyer has not been so approved by the Ordinary, Forms 24, 25, 26 may be used.

8. APPOINTMENT OF DEFENDANT'S PROCURATOR

184. When the defendant has received the summons or citation notifying him of the filing of the suit, his first step should be to appoint a

Procurator to represent him in these proceedings, and to secure a lawyer.

(*Form 3:* Appointment of Procurator, *page 130.*)
(*Form 23-26:* Appointment of lawyer, *page 157 sqq.*)

9. EXCEPTIONS

185. After the Procurator has been appointed by the defendant, the Procurator may then file any exceptions which he may have

(1) To the capacity of the plaintiff to bring the suit;
(2) To the form of the petition;
(3) To the sufficiency of the allegations;
(4) To the jurisdiction of the Court;
(5) To the person of the Judges and of the Defensor Vinculi.

10. DEFENDANT'S ANSWER—JOINING OF ISSUE

186. In the event that no exceptions are filed, the answer should be prepared and issue joined.

Issue is joined when the defendant files his answer either affirming or denying the allegations contained in the plaintiff's petition, thus signifying his intention of prosecuting the case before the Court. The effect of the joining of issue is to set forth clearly the real questions submitted to the Court for its judicial determination.

Canon Law does not prescribe any particular

form in which the answer must be drawn. In fact, the defendant may appear and deliver his answer orally, which is reduced to writing by the Secretary of the Court.

However, the best way of proceeding is to follow the practice of the civil Courts. The defendant, who has previously received a copy of the plaintiff's petition, should prepare his answer, which must be in writing. In this answer he should specifically admit or deny each particular allegation contained in the plaintiff's petition. The answer should be filed with the Secretary of the Court within ten (or more) days from the serving of the citation.

(*Form 27:* Answer of defendant, *page 162.*)
(*Form 28:* Answer of defendant "in forma pauperis," *page 164.*)

187. The Auditor may, if he thinks it necessary, call a special meeting and propound questions to both parties in order to more clearly establish the issues of the case. If there is any dispute as to the particular questions involved in the controversy so presented, the Auditor will then determine just what the issues of the case are.[1]

[1] As in the majority of cases it happens that the defendant neither appears nor gives any excuse for failing to do so, and files no written answer, it then becomes the duty of the Auditor, on suggestion of either the plaintiff or the Defensor Vinculi, to declare the defendant in contempt (contumacious), and order the case to be proceeded with.

(*Form 29:* Decree of contumacy, *page 165.*)

188. The Auditor shall then issue an order (*Form 30*), and the Secretary shall inform the parties of their following rights under Canon Law:

(1) To prepare and file any questions which they may desire to have propounded to and answered by the opposing party.

(2) To present the names of witnesses whom they desire to be summoned, and to prepare and file questions to be propounded to and answered by these witnesses.

(3) To file any document which they may desire to have admitted as evidence in support of their claims.

(*Form 31, page 167.*)

DE LITIS CONTESTATIONE

CAN. 1726. Objectum seu materia judicii constituitur ipsa litis contestatione, seu formali conventi contradictione petitioni actoris, facta animo litigandi coram judice.

CAN. 1727. Ad litis contestationem nulla necessaria est sollemnitas, sed sufficit ut partibus coram judice vel ejus delegato comparentibus, in actis inseratur petitio actoris et contradictio conventi, unde constet qua de re agatur seu quinam sint controversiae termini.

CAN. 1730. Antequam litis contestatio locum habuerit, judex ad testium aliarumve probationum receptionem ne procedat, nisi in casu contumaciae, aut nisi testium depositionem recipere oporteat, ne ipsa ob probabilem testis mortem, ob discessum ejusdem vel ob aliam justam causam recipi postea nequeat, aut difficulter possit.

CAN. 1731. 2°. Lite contestata, judex congruum tempus

partibus praestituat probationibus proponendis et explendis; quod quidem poterit, instantibus partibus, arbitrio suo prorogare, dummodo ne lis, ultra quam aequum sit, protrahatur.

II. THE TRIAL

1. EXAMINATION OF THE PARTIES

189. The Auditor has the duty to examine both the plaintiff and the defendant in order to establish the truth of the facts at issue.

190. The Defensor Vinculi shall at this time prepare and file any questions he may desire to have propounded to and answered by the parties.

(*Form 32:* Filing of questions prepared by Defensor Vinculi, *page 169.*)

191. The plaintiff and the defendant shall now file the questions which they have prepared and desire to have propounded to the opposing party.

(*Form 33:* Application for examination of opposing party, *page 170.*)

192. It is the duty of the Auditor separately to summon the parties to give their testimony.[1]

(*Form 34:* Citation of party litigant, *page 172.*)

The Defensor Vinculi must be notified in advance of the dates fixed for the examination of the plaintiff and of the defendant.

(*Form 35:* Notice to the Defensor Vinculi, *page 173.*)

[1] The examination of the plaintiff and the defendant is conducted in the same manner as the examination of witnesses. See Nos. 198-204: Examination of witnesses.

DE INTERROGATIONIBUS PARTIBUS IN JUDICIO FACIENDIS

CAN. 1742 § 1. Judex ad eruendam veritatem facti quod publice interest ut extra dubium ponatur, debet partes interrogare.

§ 3. Interrogatio partium fieri a judice potest in quovis stadio judicii ante conclusionem in causa; post conclusionem in causa, servetur praescriptum can. 1861.

CAN. 1968. Defensoris vinculi est examini partium . . . adesse; exhibere judici interrogatoria clausa et obsignata, in actu examinis a judice aperienda, et partibus . . . proponenda; novas interrogationes, ab examine emergentes, judici suggerere.

CAN. 1745 § 1. Tum actor tum reus invicem . . . possunt judici exhibere articulos, seu quaesita, super quibus pars interrogetur, quaeque vulgo *positiones* dicuntur.

§ 2. In positionibus exarandis, admittendis, et parti proponendis regulae cum proportione serventur quae in can. 1773-1781 statutae sunt.

CAN. 1744. Jusjurandum de veritate dicenda in causis . . . contientiosis, quoties bonum publicum in causa est, debet [judex] a partibus exigere . . .

CAN. 1743 § 1. Judici legitime interroganti partes respondere tenentur et fateri veritatem, nisi agatur de delicto ab ipsis commisso.

2. WITNESSES

(*a*) APPLICATION FOR SUMMONING OF WITNESSES [1]

193. After the joining of issue, the plaintiff and the defendant shall file their application for

[1] Can. 1974 specifically states that the restrictions contained in CAN. 1757 § 3, 3°, do not apply in matrimonial cases. Therefore the relatives in any degree of either party may testify.

CAN. 1757 . . . repelluntur a testimonio ferendo

§ 3. Ut incapaces:

3°. Conjux in causa sui conjugis, consanguineus et affinis in

the summoning of witnesses, together with the questions to be propounded to these witnesses.

(*Form 36:* Application for witnesses, *page 174.*)

194. The Auditor shall furnish the plaintiff and the defendant with the names of the witnesses which the opposing party has requested to be summoned, at the same time informing each respective party that, under Canon Law, they have the right to present any objection which they may have to the competency of any witness.

(*Form 37:* Notice to party litigant of opposing party's application for witnesses, *page 175.*)

195. If within three days no objection is made by the plaintiff or the defendant to the competency of the other's witnesses, the Auditor decrees that the said witnesses are competent and that their testimony shall be taken.

(*Form 38:* Decree granting the taking of testimony, *page 176.*)

A QUIBUS ET QUOMODO TESTES INDUCI POSSINT

CAN. 1754. Probatio per testes in quibuslibet causis admittitur, sub judicis tamen moderatione, secundum modum praefinitum in [jure canonico].

causa consanguinei vel affinis, in quolibet gradu lineae rectae et in primo gradu collateralis, nisi agatur de causis quae ad statum civilem aut religiosum personae spectant, cujus notitia aliunde haberi nequeat, et bonum publicum exigat ut habeatur.

CAN. 1974. Consanguinei et affines de quibus in can. 1757 § 3, n. 3, habentur testes habiles in causis suorum propinquorum.

CAN. 1759 § 1. Testes a partibus inducuntur.

§ 2. Possunt quoque induci a . . . defensore vinculi, si id ad causam intersit.

§ 3. Ipse judex, . . . quoties publicum bonum id exigat, potest testes ex officio inducere.

CAN. 1761 § 1. Cum probatio per testes postulatur, eorum nomina et domicilium tribunali indicentur; praeterea exhibeantur positiones seu articuli argumentorum super quibus testes sint interrogandi.

§ 2. Si ne intra diem quidem peremptorium a judice praestitutum, obtemperatum fuerit, postulatio deserta censetur.

CAN. 1763. Partes debent sibi invicem nota facere testium nomina antequam eorum examen inchoetur, aut, si id, prudenti judicis existimatione, fieri sine gravi difficultate nequeat, saltem ante testificationum publicationem.

(*b*) CITATION OF WITNESSES

196. The said witnesses are then summoned.

(*Form 39:* Citation of witness, *page 177.*)

The Defensor Vinculi must be notified in advance of the dates fixed for the examination of the witnesses.

(*Form 40:* Notice to the Defensor Vinculi, *page 178.*)

197. The Defensor Vinculi shall, preferably at this time, file his application for witnesses whom he may desire to have examined. He shall also prepare and file any questions he may desire to have propounded to and answered by the said witnesses. As the names of these witnesses are not communicated to the parties, the Auditor

may immediately give the order to summon them.

(*Form 41:* Application for witnesses filed by Defensor Vinculi, *page 179.*)

CITATIO TESTIUM

CAN. 1765. Citatio testium fit ministerio judicis, decreto interveniente, et intimanda est testibus ad normam can. 1715-1723.

CAN. 1968. Defensoris vinculi est examini . . . testium . . . adesse; exhibere judici interrogatoria clausa et obsignata, in actu examinis a judice aperienda, . . . et testibus proponenda; novas interrogationes, ab examine emergentes, judici suggerere.

(*c*) EXAMINATION OF THE WITNESSES

198. As a rule, all witnesses produced by any party to the litigation, plaintiff, defendant or Defensor Vinculi, should be examined by the Auditor in the rooms of the Court.[1]

Unless specially allowed by the Auditor, neither the plaintiff nor the defendant is permitted to be present when the witnesses are being examined.

The examination must be conducted by the Auditor in the presence of the Defensor Vinculi and of the Secretary, whose duty it is to reduce to writing the answers of the witnesses.

All witnesses must be examined separately

[1] There are certain exceptions provided for by Can. 1770.

and out of the presence and hearing of each other.

In trials under Canon Law, confrontation of witnesses, except in special cases, is not allowed.

199. Before any witness's testimony is taken, the Auditor must administer to the said witness the oath required by Canon Law.

(*Form 42:* Oath to be taken by a witness before the examination, *page 181.*)

200. The questions to be asked are usually divided into two classes: general and special.

The general questions are for the purpose of identifying the person of the witness; such as, name, age, residence, etc.

(*Form 43:* General Questions, *page 181.*)

The special questions are prepared with the view of obtaining the statements of the witness concerning his particular knowledge of any of the facts in controversy.

(*Form 44, page 182.*)

201. The following order may be observed in propounding questions to the witness.

(1) The Auditor asks the witness the general questions.

(2) He then propounds the special questions which have been prepared and filed by the litigants in the case.

(3) The Auditor opens the sealed envelope containing the questions prepared by the Defensor Vinculi, and propounds these questions to the witness.

(4) The Auditor is at liberty, during the progress of the examination, to put such questions to the witness as he may think proper for the purpose of making clear the facts testified to by the said witness, or to produce information upon any other facts relative to the case upon which the witness may not have been questioned.

(5) The purpose of the examination being to obtain the entire truth concerning the matters in controversy, the Defensor Vinculi is also at liberty to suggest additional questions to the Auditor, and said questions must be propounded by the Auditor to the witness.

202. The Secretary, in writing the answers of the witnesses, is not required to rewrite questions which have been previously prepared in writing. It is sufficient that he identify the answer of the witness by the number of the question; but when the Auditor, either on his own volition or at the request of the Defensor Vinculi, propounds a question not previously re-

duced to writing, it is the duty of the Secretary to take said questions down in writing and to preface same by the statement: "Interrogatus ex officio."

203. It is the duty of the Secretary, when reducing the testimony of the witness to writing, to take same down verbatim, unless the Auditor should specially authorize him to take merely the gist of what the witness says. This, however, should not be allowed except for grave and serious reasons. When it is permitted, great care should be exercised in order that nothing important to the determination of the case might be omitted.

204. After the testimony of the witness has been reduced to writing, it is the duty of the Auditor to request the Secretary to read aloud to the witness the testimony so given.

The witness, at this time, shall have the right to make any corrections, if he should so desire, in said testimony, and the testimony as corrected will again be read to him.

After the reading of the testimony and the statement of the witness to the fact that it correctly expresses the evidence which he has given, the Auditor may administer to the witness the oath in Form 45, swearing him to the correctness of the testimony.

(*Form 45:* Oath to be administered to a witness after his testimony, *page 184.*)

The witness then signs his name to his testimony, and the Auditor, the Defensor Vinculi and the Secretary must also place their signatures on the said document.

(*Form 46:* To be added to the testimony of a witness, *page 184.*)

(*Form 47:* Minutes of the session, *page 185.*)

DE TESTIUM EXAMINE

Can. 1770 § 1. Testes sunt examini subjiciendi in ipsa tribunalis sede.

Can. 1771. Examini testium partes assistere nequeunt, nisi judex eas admittendas censuerit.

Can. 1773 § 1. Examen fit a judice, vel ad ejus delegato aut auditore, cui assistat oportet notarius.

Can. 1968 § 1. Defensoris vinculi est examini . . . testium et peritorum adesse; exhibere judici interrogatoria clausa et obsignata, in actu examinis a judice aperienda, et . . . testibus proponenda; novas interrogationes, ab examine emergentes, judici suggerere.

Can. 1772 § 1. Testes seorsim singuli examinandi sunt.

§ 2. Prudenti tamen judicis arbitrio relinquitur post edita testimonia testes inter se aut cum parte conferre, seu, vulgo, *confrontare.*

Can. 1767 § 1. Testis, antequam testimonium edat, jusjurandum praestare debet de tota ac sola veritate dicenda, salvo praescripto can. 1758.

Can. 1773 § 2. In examine interrogationes non ab alio quam a judice, vel ab eo qui judicis locum tenet, testibus deferendae sunt. Quapropter si partes, . . . vel defensor vinculi examini intersint et novas interrogationes testi faciendas habeant, has non testi, sed judici vel ejus locum tenenti proponere debent, ut eas ipse deferat.

Can. 1774. Testis primo interrogari debet non modo de

generalibus personae adjunctis, hoc est, de nomine, cognomine, origine, aetate, religione, conditione, domicilio, sed etiam quae ipsi cum partibus in causa sit necessitudo; deinde deferendae sunt interrogationes quae causam ipsam respiciunt et sciscitandum unde et quomodo ea quae asserit, habeat cognita.

CAN. 1778. Responsio ex continenti redigenda est scripto ab actuario non solum quod attinet ad substantiam, sed etiam ad ipsa editi testimonii verba, nisi judex, attenta causae exiguitate, satis habeat unam depositionis substantiam referri.

CAN. 1780 § 1. Testi, antequam ab auditorio discedat, debent legi quae actuarius de iis, quae ipse viva voce testatus est, scripto redegit, data eidem testi facultate addendi, supprimendi, corrigendi, variandi.

§ 2. Denique actui subscribere debent testis, judex et notarius.

CAN. 1779. Actuarius in actis mentionem faciat de praestito, remisso aut recusato jurejurando, de partium aliorumque praesentia, de interrogationibus ex officio additis, et generatim de omnibus memoria dignis quae forte acciderint, cum testes excutiebantur.

3. PUBLICATION OF THE TESTIMONY, EVIDENCE AND RECORD OF PROCEDURE

205. After the testimony of the parties and of the witnesses has been taken and completed, the Auditor issues a decree publishing said testimony, which means that both the plaintiff and the defendant have the right to read and obtain copies of said testimony if they so desire.

At the same time, the Auditor issues a decree of publication of all documentary evidence which has been filed in the case.

He publishes likewise the record of the procedure followed by the Court.

(*Form 48:* Decree of publication, *page 187.*)

206. After the decree of publication has been issued, the Secretary shall notify in writing the parties or their Procurators of their right under Canon Law as follows:

(1) To read the testimony, the evidence and the record of the procedure of the Court;
(2) To obtain, if they so desire, copies of the testimony, evidence and record of procedure;
(3) To present any objections which they may have to the admissibility of either the testimony or the documentary evidence, or any part thereof, or to the procedure of the Court;
(4) To submit any additional proof which they may desire to furnish.

(*Form 49:* Notice to the parties, *page 188.*)

DE TESTIMONIORUM EVULGATIONE EORUMQUE REPROBATIONE

CAN. 1782 §1. Cum partes aut earum procuratores examini non interfuerunt, testimonia statim post absolutum omnium testium examen poterunt, decreto judicis, evulgari.

§2. Sed poterit judex differre testimoniorum evulgationem in tempus quo cetera probationum capitula fuerint absoluta, si id e re existimet.

CAN. 1783. Post testificationum evulgationem:

1°. Cessat facultas reprobandi testis personam, excepto casu de quo in can. 1764, § 4;

2°. Sed est jus reprobandi testes sive quod attinet ad modum examinis, cum scilicet objiciuntur regulae juris in examine peragendo neglectae, sive quod attinet ad testificationes ipsas, cum nempe testimonia impugnantur de falso aut de variatione, contradictione, obscuritate, defectu scientiae et similibus.

DE PROCESSUS PUBLICATIONE

CAN. 1858. Ante causae discussionem et sententiam omnes probationes quae sunt in actis et quae adhuc secretae permanserunt, sunt publicandae.

CAN. 1859. Concessa partibus earumque advocatis facultate acta processualia inspiciendi petendique eorum exemplar, intelligitur facta publicatio processus.

CAN. 1983 § 1. Publicato processu adhuc est partibus novos testes, ad normam tamen can. 1786,[1] super diversis articulis inducere.

§ 2. Si vero testes jam excussi super iisdem articulis antea propositis denuo audiendi sint, servetur praescriptum can. 1781, integro jure defensoris vinculi opportunas proponendi exceptiones.

4. CLOSING OF THE TRIAL

207. After the judiciary delays have elapsed, if no objections have been filed by either party,

[1] CAN. 1786. Post evulgatas testificationes, testes jam auditi denuo super iisdem articulis ne interrogentur, neque novi testes admittantur, nisi caute et ex gravi ratione in causis quae nunquam transeunt in rem judicatam; . . . et in quolibet casu omni fraudis et subornationis periculo remoto, altera parte audita, et requisito voto . . . defensoris vinculi; . . . quae omnia judex decreto suo definiat.

the Auditor issues a decree closing the taking and filing of evidence.

(*Form 50:* Decree of the closing of the trial, *page 189.*)

DE CONCLUSIONE IN CAUSA

CAN. 1860 § 1. Expletis omnibus quae ad probationes producendas pertinent, ad conclusionem in causa deveniendum est.

§ 2. Haec conclusio habetur quoties aut partes a judice interrogatae declarent se nihil aliud deducendum habere, aut utile proponendis probationibus tempus a judice praestitutum elapsum sit, aut judex declarat se satis instructam causam habere.

§ 3. De peracta conclusione in causa, quocunque modo ea acciderit, judex decretum ferat.

CAN. 1861 § 2. Si [post conclusionem in causa] novas probationes admittendas censeat, id decernat judex, audita parte altera, cui congruum tempus concedat ut novas probationes cognoscere et se defendere possit; aliter judicium nullius est momenti.

III. THE DEFENSE

1. BRIEFS OF THE PROCURATORS

208. The Secretary then notifies in writing the parties or their Procurators that the decree of closing the trial has been issued, and instructs them to prepare and file their briefs (arguments and reasons in support of their contentions) in writing. Five copies of the briefs should be furnished.

(*Form 51:* Notice to the Procurators of the parties, *page 191.*)

209. When the briefs are filed, the Officialis orders a copy of same to be served on the opposing party.

(*Form 52:* Order to serve brief on opposing party, *page 192.*)

210. At the time that the copy of the opposing party's brief is served, the party to whom it is furnished should be notified of his or her right to file a supplemental brief, and, if he deem it necessary, to apply for an oral argument.

(*Form 53:* Notice to the opposing party, *page 193.*)

211. If the parties file supplemental briefs, a copy of same must be served upon the opposing party.

No further supplemental briefs are permitted to be filed unless special permission be obtained from the Officialis, who shall grant this permission only for grave and serious reasons.

212. After the parties have filed their briefs, and, if need be, argued their case orally, the Officialis issues an order to have said briefs delivered to the Defensor Vinculi.

(*Form 54:* Order to serve briefs upon Defensor Vinculi, *page 194.*)

2. ARGUMENT OF THE DEFENSOR VINCULI

213. The Secretary notifies the Defensor Vinculi to prepare his brief and file same.

(*Form 55:* Notice to Defensor Vinculi, *page 195.*)

The brief of the Defensor Vinculi should be in writing and should be filed without unnecessary delay.

214. The Officialis orders a copy of said brief to be delivered to each of the party litigants, and fixes the time within which they may file an answer if they so desire.

(*Form 56:* Order of the Court to deliver brief of Defensor Vinculi to the litigants, *page 196.*)

215. It is the duty of the Secretary of the Court to send to each of the parties a copy of the Defensor Vinculi's brief.

(*Form 57:* Notice of the Secretary to the party litigants, *page 197.*)

216. If the plaintiff or the defendant or both file an answer, a copy of the answer or answers will be ordered by the Court to be delivered to the Defensor Vinculi.

(*Form 58:* Order of the Court, *page 197.*)

217. It is then the duty of the Secretary to deliver to the Defensor Vinculi copies of the answers filed.

(*Form 59:* Letter of the Secretary to the Denfensor Vinculi, *page 198.*)

218. The Defensor Vinculi has the right to prepare and file a supplemental brief. This supplemental brief is delivered to the party litigants. The parties, however, are not allowed,

as we have seen in No. 38, to file any additional or supplemental answers unless they first obtain from the Court a special permission to do so. The Officialis shall grant this permission only for grave and serious reasons.

If this permission is given, the Defensor Vinculi has the right to file an additional brief, he having the right to be heard last whether the arguments be contained in written briefs or made orally.

219. The Officialis orders a copy of all briefs filed with the Court to be given to each Associate Judge.

(*Form 60:* Order to deliver copies of briefs to the Associate Judges, *page 199.*)

220. The Secretary sends to each Associate Judge the notice contained in Form 61, page 200.

221. As the validity of the marriage is favored, considerable latitude is allowed the Defensor Vinculi; and even after the filing of his brief or, in addition, having presented his arguments orally to the Court, he has the right to present and file additional written reasons.

(*Form 62:* Letter of the Officialis to the Defensor Vinculi, *page 201.*)

222. It is only when the Defensor Vinculi has notified the Court that he has nothing further to present for their consideration that the Offi-

cialis calls a meeting of the Judges to render their decision.

(*Form 63:* Order of the Court, *page 202.*)
(*Form 64:* Notice to the Associate Judges, *page 203.*)

DE CAUSAE DISCUSSIONE

CAN. 1862 § 1. Facta conclusione in causa, judex, pro suo prudenti arbitrio, partibus congruum temporis spatium praestituat ad defensiones suas seu allegationes sive per se sive per advocatum exhibendas.

§ 2. Hic terminus prorogari a judice potest instante una parte, audita altera; vel etiam coarctari, utraque consentiente.

CAN. 1863 § 1. Defensio in scriptis est conficienda, et regulariter tot exemplaribus conscribenda quot sunt judices, ut singula singulis judicibus possint exemplaria distribui.

§ 2. Sed etiam . . . defensori vinculi . . . debet exemplar tradi; praeterea partes inter se exemplaria commutare debent.

CAN. 1864. Judicis et in tribunali collegiali praesidis est moderari, pro sua prudentia, nimiam defensionum extensionem, nisi de hoc peculiari tribunalis lege sit cautum.

CAN. 1865 § 1. Communicatis vicissim inter partes defensionum scripturis, utrique parti responsiones exhibere liceat, intra breve tempus a judice praestitutum, et servatis regulis et cautelis de quibus in can. 1863, 1864.

§ 2. Hoc jus partibus semel tantum esto, nisi judici gravi ex causa iterum videatur concedendum; tunc autem concessio, uni parti facta, alteri quoque data censeatur.

CAN. 1984 § 1. Defensor vinculi jus habet ut in allegando, petendo et respondendo, tam in scriptis quam in defensione orali, audiatur postremus.

§ 2. Quare tribunal ad definitivam sententiam ne de-

veniat, nisi prius vinculi defensor interrogatus declaraverit sibi nihil deducendum vel inquirendum superesse.

§ 3. Si vero ante praefinitum a judice judicii diem defensor nihil deduxerit, praesumitur eum nihil jam deducendum habere.

IV. THE JUDGMENT

1. RENDITION OF THE JUDGMENT

223. It is the duty of each Judge to prepare in writing his conclusions on the merits of the case, and to state his reasons for reaching these conclusions.

(*Form 65, page 204.*)

224. On the day appointed by the Officialis, the Judges should attend the session of the Court and present their written opinions.[1]

The procedure at this session should be as follows:

(1) The Ponens, the Officialis and the other Associate Judge each in turn should read their prepared opinions.

(2) If it is deemed necessary, a further discussion of the law and the facts of the case may be had at this session among the Judges. This is often necessary in order to determine the positive part of the sentence, viz., whether or not the

[1] The written opinions of the Judges are to be filed and preserved, but are not published and are not to be seen by the parties; they must be kept secret.

marriage is to be declared null, and to properly express in the sentence the reasons of said decision.

(3) Any Judge is permitted at this session to change his findings of law or fact.

(4) If the final decision is not unanimous, the decision of the majority of the Judges becomes the decision of the Court.

(5) It is the duty of the Ponens to write the sentence of the Court and to have said sentence signed by all the Judges. Even the Judge disagreeing with the sentence must sign same.

(*Form 66:* Sentence, *page 205.*)
(*Form 67:* Minutes of the Session, *page 207.*)

DE SENTENTIA

Can. 1869 § 1. Ad pronuntiationem cujuslibet sententiae requiritur in judicis animo moralis certitudo circa rem sententia definiendam.

§ 2. Hanc certitudinem judex haurire debet ex actis et probatis.

§ 3. Probationes autem aestimare judex debet ex sua conscientia, nisi lex aliquid expresse statuat de efficacia alicujus probationis.

§ 4. Judex qui eam certitudinem efformare sibi non potuit, pronuntiet non constare de jure actoris [de nullitate matrimonii] et reum dimittat.

Can. 1871 § 1. In tribunali collegiali, qua die et hora judices ad deliberandum conveniant, collegii praeses constituat; et nisi peculiaris causa aliud suadeat, in ipsa tribunalis sede conventus habeatur.

§ 2. Assignata conventui die, singuli judices scriptas afferent conclusiones suas in merito causae, et rationes tam in facto quam in jure, quibus ad conclusionem suam venerint: quae conclusiones actis causae adjungantur, secreto servandae.

§ 3. Prolatis ex ordine, secundum praecedentiam, ita tamen ut semper a causae ponente seu relatore initium fiat, singulorum conclusionibus, habeatur moderata discussio sub tribunalis praesidis ductu, praesertim ut constabiliatur quid statuendum sit in parte dispositiva sententiae.

§ 4. In discussione autem fas unicuique est a pristina sua conclusione recedere.

§ 5. Quod si judices in prima discussione ad hanc sententiam devenire aut nolint aut nequeant, differri poterit decisio ad novum conventum; qui tamen ultra hebdomadam comperendinari non debet.

Can. 1577 § 1. Tribunal collegiale collegialiter procedere debet, et ad majorem suffragiorum partem sententias ferre.

Can. 1584. [Ponentis seu relatoris est in coetu judicum de causa referre et sententias in scriptis redigere.]

Can. 1873 § 1. Sententia debet:

1°. Definire controversiam coram tribunali agitatam . . . ;

3°. Continere rationes seu *motiva* quae dicuntur, tam in facto quam in jure, quibus dispositiva sententiae pars innititur;

4°. Statuere de litis expensis.

§ 2. In tribunali collegiali motiva ab extensore desumantur ex iis quae singuli judices in discussione attulerunt, nisi ab ipsa judicum majore parte praefinitum fuerit quaenam sint motiva proferenda.

Can. 1874 § 1. Sententia ferri debet, divino Nomine ab initio semper invocato.

§ 2. Dein exprimat oportet ex ordine qui sit judex aut tribunal; qui sit actor, reus, procurator, nominibus et domicilio rite designatis, et defensor vinculi. . . .

§ 3. Referre postea debet breviter facti speciem cum partium conclusionibus.

§ 4. Hisce subsequatur pars dispositiva sententiae, praemissis rationibus quibus innititur.

§ 5. Claudatur cum indicatione diei et loci in quibus exarata est et cum subscriptione judicis vel omnium judicum, si plures fuerint, et notarii.

2. PUBLICATION OF THE JUDGMENT

225. As soon as the sentence of the Judges has been rendered, it should be published.

Publication of the sentence may be accomplished in any one of three ways:

(1) By summoning the parties to the Court and, in the presence of the Judges sitting en banc, reading the judgment to both parties;

(2) By notifying both parties that the judgment has been rendered and is on file in the office of the Court's Secretary, and that by applying to the Secretary opportunity will be given them of reading the judgment and procuring a copy of same;

(3) By sending a copy of the judgment to the parties themselves or to their Procurators.

226. Presupposing that the third method of publishing the judgment will be the one generally adopted, the following forms should be used:

(1) If the decision decrees the nullity of the marriage, the Secretary notifies the plain-

tiff's Procurator, using Form 68; he notifies the defendant, using Form 69; and he notifies the Defensor Vinculi, using Form 70.

(2) On the other hand, if the decree of the Court is against the nullity of the marriage, the Secretary notifies the plaintiff, using Form 71; and he notifies the defendant, using Form 72, and the Defensor Vinculi, using Form 73.

PUBLICATIO SENTENTIAE

CAN. 1876. Sententiam quamprimum publicetur.

CAN. 1877. Publicatio sententiae fieri potest tribus modis, vel citando partes ad audiendam sententiae lectionem sollemniter factam a judice pro tribunali sedente; vel partibus denuntiando sententiam esse penes cancellariam tribunalis, unaque facultatem ipsis fieri eandem legendi et ejusdem exemplar petendi; vel tandem, ubi usus viget, sententiae exemplar transmittendo ad partes per publicos tabellarios ad normam can. 1719.

V. THE APPEAL

227. An Appeal is the taking of a case after the decision of a lower Court to a higher or Appellate Court in order that the decision of the lower Court may be either affirmed or reversed.

In matrimonial cases, when the marriage has been upheld, that is, declared valid, by the lower Court, the plaintiff may appeal. If, on the other

hand, the marriage has been declared invalid, the defendant may appeal. But where the sentence of the lower Court has been given in a solemn trial decreeing the marriage to be null, even though the defendant refuses to appeal, it is the positive duty of the Defensor Vinculi to appeal the case to the higher tribunal. In the event that the Defensor Vinculi should neglect to perform this duty, the lower Court itself is bound to oblige him to take the appeal and to see that it is properly lodged in the Appellate Court.

NOTICE TO THE LOWER COURT OF INTENTION TO APPEAL

228. Within ten days after receiving the notice of the judgment of the Court, the Defensor Vinculi should prepare in writing his notice of appeal to the proper Appellate Court, and this notice of appeal must be filed with the Secretary of the lower Court, and becomes a part of the permanent record of the case.[1]

(*Form 74:* Notice of Appeal, *page 214.*)

229. It is the duty of the Secretary, immediately upon receiving the notice from the De-

[1] If the judgment of the Court has been rendered en banc in the presence of the parties and of the Defensor Vinculi, the Defensor may, in presence of the Court, orally notify the Court that he will take an appeal. If this is done, it is necessary that the Secretary of the Court reduce to writing the oral notice so given by the Defensor Vinculi and file same in the record of the case.

fensor Vinculi of his intention to appeal from the decision of the lower Court, to notify the Officialis of the Court and to obtain from him an order directing that the record in the case, either the original itself or certified copies of the original, be sent to the Appellate Tribunal.

(*Form 75:* Order to send record to the Appellate Court, *page 216.*)

(*Form 76:* Receipt of Notice of Appeal, *page 217.*)

230. As soon as the Officialis signs the foregoing order to send the record to the Appellate Tribunal, it is the duty of the Secretary to prepare the record and to see that it contains all of the papers in the case: the pleadings, affidavits, testimony and all other documents filed in the said case.

The Secretary should make an index of all these documents: the index should contain a brief description of what the document is.

Each sheet of the original record must be stamped with the seal of the Court and bear the signature of the Secretary.

When copies are made, the Secretary must, in addition, certify on each page that it is a true copy of the original.

231. In cases where instead of the original record and documents copies have been sent to the Appellate Court, the Secretary must sign a certificate of transcript in accordance with Form

77. In this certificate the Secretary certifies that the copies are a true and complete transcript of the originals on file in the lower Court.

If, on the other hand, the original record itself is delivered to the Appellate Court, the Secretary must sign a certificate in accordance with Form 78, certifying that the record is complete and that nothing has been omitted therefrom.

232. The Secretary then uses Form 79 (*page 219*) in sending the record to the Appellate Court.

DE APPELLATIONIBUS.—DE INTERPOSITIONE APPELLATIONIS

CAN. 1986. A prima sententia, quae matrimonii nullitatem declaraverit, vinculi defensor, intra legitimum tempus, ad superius tribunal provocare debet; et si negligat officium suum implere, compellatur auctoritate judicis.

CAN. 1879. Pars quae aliqua sententia se gravatam putat, itemque . . . defensor vinculi in causis in quibus interfuit, jus habent a sententia appellandi, id est provocandi ab inferiore judice qui sententiam tulit, ad superiorem, salvo praescripto can. 1880.

CAN. 1881. Appellatio interponi debet coram judice *a quo* sententia prolata est intra decem dies a notitia publicationis sententiae.

CAN. 1882 § 1. Appellatio fieri potest oretenus coram judice pro tribunali sedente, si publice sententia legatur, statimque ab actuario scriptis redigenda est.

§ 2. Aliter facienda est in scriptis, salvo casu de quo in can. 1707.

CAN. 1890. Interposita appellatione tribunal *a quo* debet ad judicem *ad quem* actorum causae authenticum exemplar vel ipsamet originalia acta causae transmittere ad normam can. 1644.

B.

Procedure in the Diocesan Matrimonial Court Acting as an Appellate Tribunal

233. An Appeal is taken from the decision of the Diocesan Matrimonial Court to the Metropolitan See.

If the Court of First Instance is the Metropolitan Court itself, the appeal is directed to the Court of the diocese which the Metropolitan, with the approval of the Holy See, has chosen once for all as his Appellate Court.

Can. 1594 § 1. A tribunali Episcopi Suffraganei appellatur ad Metropolitam.

§ 2. A causis in prima instantia pertractatis coram Metropolita fit appellatio ad loci Ordinarium, quem ipse Metropolita, probante Sede Apostolica, semel pro semper designaverit.

234. The party taking the appeal is called the Appellant; the party against whom the appeal is taken is called the Appellee. In other words, the Appellant seeks to reverse the judgment of the lower Court; the Appellee usually seeks to have it affirmed.

235. Canon 1595 provides that the Tribunal of Second Instance, that is, the Appellate Tribunal, shall be organized in the same manner as the lower Tribunal, or Court of First Instance, and shall follow the same procedure.

As we have already given this procedure in detail (*see* Part II, Chapter I, Nos. 173-226), we shall briefly summarize it here, giving the few changes which circumstances make necessary.

236. Canon 1596 provides that both Tribunals shall be composed of the same number of Judges. When the lower Court has been composed of three Judges, the Appellate Tribunal must also be composed of three Judges. Likewise, if five Judges have sat in the lower Court, five Judges must sit in the Appellate Court. The same rules governing the manner in which the Judges of the lower Court function, apply to the Appellate Court, as both of these Courts are Collegiate Tribunals.

CAN. 1595. Tribunal appellationis eodem modo quo tribunal primae instantiae constitui debet; et eaedem regulae, accommodatae ad rem, in causae discussione servandae sunt.

CAN. 1596. Si collegialiter causa in prima instantia cognita fuerit, etiam in gradu appellationis collegialiter nec a minore judicum numero definiri debet.

1. THE MOTION OF APPEAL

237. Within a month after the Defensor Vinculi (or the Procurator of the party appealing) has notified the lower Court of his intention to appeal, the order having been granted by the lower Court for the preparation of the record, it is the duty of the Defensor Vinculi (or of the

Procurator) to file his appeal in the Appellate Tribunal.

238. The petition for the appeal to the higher Court must include the reasons why it is contended that the judgment appealed from is incorrect, and the following documents should be filed together with the motion of appeal itself:

(1) A copy of the sentence of the lower Court;

(2) A copy of the notice given by the Defensor Vinculi (or the Procurator) to the lower Court of his intention to appeal.

(*Form 80:* Motion of Appeal, *page 220.*)

DE PROSECUTIONE APPELLATIONIS

CAN. 1883. Appellatio prosequenda est coram judice *ad quem* dirigitur intra mensem ab ejus interpositione, nisi judex *a quo* longius tempus ad eam prosequendam parti praestituerit.

CAN. 1884 § 1. Ad prosequendam appellationem requiritur et sufficit ut pars ministerium invocet judicis superioris ad impugnatae sententiae emendationem, adjuncto exemplari hujus sententiae et libelli appellatorii quem judici inferiori exhibuerat.

§ 2. Quod si pars exemplar impugnatae sententiae intra utile tempus a tribunali *a quo* obtinere nequeat, interim termini non decurrunt et impedimentum significandum est judici appellationis, qui judicem *a quo* praecepto obstringat officio suo quamprimum satisfaciendi.

CAN. 1886. Inutiliter elapsis fatalibus appellatoriis sive coram judice *a quo,* sive coram judice *ad quem,* deserta censetur appellatio.

239. The petition of appeal and the documents

annexed to it are received and filed by the Secretary of the Appellate Court, and the cause is given a number.

(*Form 81, page 222.*)

240. When the record of the case has been sent by the Secretary of the lower Court, the Secretary of the Appellate Court files it (*Form 82, page 223*) and notifies the Officialis.

2. THE TRIAL

241. The Officialis appoints the Associate Judges for this case and designates a day for the first meeting of the Court. (*See* Part II, Nos. 178 sqq.)

(*Form 83:* Order for the appointment of the Associate Judges, *page 224.*)

242. Letters of appointment are sent by the Secretary of the Court to each Associate Judge.

(*Form 84:* Notice of appointment of Associate Judge, *page 225.*)

243. The Secretary notifies also the Defensor Vinculi of the Appellate Court of the time and place of the first session of the Court, directing him to examine the petition for the appeal, and to state his reasons, if any he may have, why the appeal should not be received.

(*Form 85:* Notice to the Defensor Vinculi, *page 225.*)

244. It is well to remember that it is the duty

of the Defensor Vinculi of the Appellate Court to urge the validity of the marriage; and in cases where the marriage has been declared valid by the lower Court, it is his duty to urge every legitimate reason to the Appellate Court why it should refuse to receive the appeal.

245. On the other hand, it is the duty of the Appellate Court to resolve any doubt in favor of the Appellant and accept the appeal unless it is obvious that it should not be allowed; the reason being that everyone has a natural right to appeal from a judgment by which he is aggrieved.

246. At the first session of the Court, the question to be determined is whether or not the appeal should be received. The Defensor Vinculi must be heard and his reasons against (or for, when the lower Court has declared the marriage invalid) the admissibility of the appeal considered.

The Court must examine:

1. The right of the appellant to appeal;
2. If the appeal has been taken within the time specified by Canon Law;
3. The reasons for the appeal;
4. If the judgment appealed from is final.

247. If it should happen that the judgment of the lower Court is null, but its validity has not been attacked in the lower Court,[1] the Appellate

[1] See Can. 1892-1897.

Court will remand the case to the lower Court, as, according to Canon 1880, 3°, an appeal does not lie from a sentence that has been pronounced without regard to the provisions of the law.

248. When the Court determines that the appeal should be received, it renders an order accepting it.

(*Form 86:* Decree of acceptance of the Appeal, *page 227.*)

249. The appellee must be notified of the acceptance of the appeal, a citation must be issued and served upon him (together with a copy of the appellant's petition) ordering him to appear and give his reasons, if any he may have, why the appeal should be dismissed.

(*Form 87:* Citation of Appellee, *page 228.*)
(*Form 22:* Notice to Appellant, *page 156.*)

250. The first act of the appellee must be to appoint a lawyer who will take charge of the case for him in the Appellate Court. The Procurator who has represented him in the lower Court should also represent him in the Appellate Court; but if this is not possible, the appellee has the right to appoint a new Procurator for this purpose.

251. The Procurator, in obedience to the citation issued by the Court, must file his answer to the appellant's petition for appeal. The answer must contain the reasons why the appeal should

not be considered, either because the appeal has not been properly taken, or has not been filed within the time prescribed, etc.

The answer must also contain a plea to the merits of the case, that is, the allegations of the appellant's petition for appeal must be answered categorically, affirming or denying each of the assignments of error in the judgment of the lower Court urged by the appellant. (*See* Part II, No. 186.)

The filing of the appellee's answer joins the issue.

252. The Court orders the appellant to file his brief. This brief is a written argument or discussion of the law and the facts in the case in support of the allegations contained in the petition for appeal.

253. The service of a copy of the briefs upon the opposing party and the Defensor Vinculi, together with their right to file their own briefs, etc., has been fully explained in Part II, Nos. 208-222.

254. After the closing of the arguments, the Officialis orders that each of the Associate Judges examine the record of the lower Court, the new proofs and evidence which may have been filed in the Appellate Court, and briefs of all parties.

255. As has been explained in Part II (No. 221), it is the duty of the Officialis to demand of

the Defensor Vinculi if he desires to add anything to the record, either arguments or facts.

256. When the Defensor Vinculi declares that there is nothing further to be done and that the record is complete, the Officialis calls the Court to meet in order that final judgment may be rendered. (*See* Part II, Nos. 223 sqq.)

3. THE SENTENCE

257. It is important to note that Canon Law requires the Appellate Court to give its reasons for the rendition of its judgment; and these reasons must be based upon the law and the facts in the case. The Appellate Court is not permitted to render a judgment which merely affirms or reverses the judgment of the lower Court. In other words, the decision of the Appellate Court, while it affirms or reverses the decision of the lower Court, yet must be independent of it and complete in itself.

(*Form 88:* Judgment of the Court, *page 230.*)

258. The Appellate Court in its judgment must tax the amount of costs incurred in the Appellate trial to be paid by each litigant; and in addition must review the assessments and taxing of costs by the lower Court. This is necessary because not only the merits of the case are included in the sentence of the lower Court, but also the taxing of costs; and the appeal from the sen-

tence has placed both matters before the Appellate Court.

4. THE PUBLICATION OF THE SENTENCE

259. The judgment of the Appellate Court is published in the same manner as the judgment of the lower Court. *See* No. 225.

Form 89 may be used by the Secretary of the Court when sending a copy of the sentence both to the appellant and to the appellee.

5. FURTHER APPEALS

260. When the judgment of the Appellate Court affirms a judgment of the lower Court decreeing the nullity of a marriage, the Defensor Vinculi of the Appellate Court is obligated to appeal the judgment of the Appellate Court to the Holy Roman Rota if he has any conscientious doubt as to the correctness of the decision. If, on the other hand, he is satisfied that the decision of both Courts is correct, he should not appeal to Rome.

261. Even in such a case, however, the defendant may appeal to Rome if he believes that there is a good reason for so doing.

262. In a case where the judgment of the lower Court holds the marriage valid and the plaintiff has taken an appeal, if the judgment of the Appellate Court reverses the judgment of the lower

Court and declares the marriage null, then the case must be appealed to Rome, because the nullity of a marriage cannot be established except by the sentence of two Courts decreeing it to be null. (*See* Can. 1986.)

Can. 1987. Post secundam sententiam, quae matrimonii nullitatem confirmaverit, si defensor vinculi in gradu appellationis pro sua conscientia non crediderit esse appellandum, jus conjugibus est, decem diebus a sententiae denuntiatione elapsis, novas nuptias contrahendi.

6. EXECUTION OF THE SENTENCE

263. If no appeal is taken to the Holy Roman Rota within ten days from the publication of the judgment of the Appellate Court affirming the judgment of the lower Court in which the nullity of the marriage is decreed, the parties are at liberty to contract a new marriage.

264. After the rendition of the judgment and the delays for an appeal have expired, the Appellate Court must issue an order commanding that its judgment be executed.

(*Form 90, page 232.*)

265. This order is directed to the Ordinary of the place in which the Court of First Instance sat.

(*Form 91, page 233.*)

It is the Ordinary's duty to either execute the judgment himself or to appoint someone a sheriff in his place and stead to do so.

266. If the Ordinary of the lower Court fails either through neglect or for other reasons to execute the judgment of the Appellate Court, it then becomes the duty of the Ordinary of the Appellate Court himself to execute it either upon his own motion (ex officio) or upon the request of the interested party.

267. The execution of the judgment in a matrimonial case consists of the following:

1. The notification in writing to the parties that the judgment of the Appellate Court is final, as no appeal was taken within the time allowed by law, and that they are free to contract a new marriage.

(*Form 92, page 234.*)

2. Notification to the parish priest of the parish in which the marriage was celebrated that the marriage has been declared null, and direction given him to enter the decree of nullity of the marriage upon the marriage record book of the parish.

(*Form 93, page 235.*)

The same notification must also be sent to the parish priests of the parishes in which the parties were baptized, directing them to enter the decree of nullity upon the baptismal records of their parishes.

(*Form 94, page 237.*)

3. The collection of the costs imposed by the judgment from the parties condemned to pay

them, as well as the reimbursement of costs by one of the parties to the other according to the decree of the Court. Usually four months are allowed in which the costs or the reimbursement of costs may be paid. The executor of the judgment may exercise his discretion and reduce the time allowed to not less than two months, or increase it to not more than six months.

268. In case a party condemned to pay costs or to reimburse the other party for costs expended by him refuses to obey the executor's orders, it is the duty of the executor to use every effort by persuasion, admonitions, etc., to have the party obey the orders of the Court before resorting to spiritual penalties and censures. And even in cases when it is necessary to resort to spiritual penalties and censures, the executor should first impose the lighter and lesser ones before the imposition of the graver or more serious penalties.

269. *N. B.* Marriage cases never pass into rem judicatam, and therefore may always be brought to Court again for determination. However, according to Canon 1903, this can be done only if new and very serious proofs or documents can be furnished as the basis of a new trial.

DE EXSECUTIONE SENTENTIAE

CAN. 1918. Non antea exsecutioni locus esse poterit, quam exsecutorium judicis decretum habeatur, quo scili-

cet edicatur sententiam ipsam exsecutioni mandari debere; quod decretum pro diversa causarum natura vel in ipso sententiae tenore includatur vel separatim edatur.

Can. 1920 § 1. Sententiam exsecutioni mandare debet per se vel per alium Ordinarius loci in quo sententia primi gradus lata est.

§ 2. Quod si hic renuat vel negligat, parte cujus interest instante vel etiam ex officio, exsecutio spectat ad judicem appellationis.

Can. 1988. Decreta matrimonii nullitate, Ordinarius loci curare debet, ut de ea mentio fiat in baptismorum et matrimoniorum regestis, ubi matrimonii celebratio consignata invenitur.

Can. 1922 § 1. Quod attinet ad reales actiones, adjudicata actori re aliqua, haec actori tradenda est statim ac res judicata habetur.

§ 2. Quod vero attinet ad actiones personales, cum reus damnatus est ad rem mobilem praestandam, vel ad solvendam pecuniam, vel ad alius dandum aut faciendum, quadrimestre conceditur pro implenda obligatione.

§ 3. Judex potest terminum praescriptum vel reducere vel protrahere, ita tamen ut neque infra bimestre coarctetur, neque semestre excedat.

Can. 1924. Exsecutor utatur prius monitis et praeceptis erga reluctantem; ad poenas autem spirituales et ad censuras ne deveniat, nisi ex necessitate et gradatim.

Can. 1989. Cum sententiae in causis matrimonialibus nunquam transeant in rem judicatam, causae ipsae, si nova argumenta praesto sint, retractari semper poterunt, firmo praescripto can. 1903.

Chapter II

SUMMARY TRIALS

270. A Summary Trial is one in which only the essentials of a trial are required to be observed, and all accidental parts or formalities, called the solemnities of a trial, are omitted.

271. The essentials of a trial required by natural law itself may be reduced to three in number:

1. The demand of the plaintiff, or the presentation of the question to the Judge for his determination, together with the plaintiff's proofs in support of his or her contentions.

2. The answer of the defendant, who must be notified of the plaintiff's contentions and be cited to appear and present his or her proofs why the demand of the plaintiff should be rejected.

3. The sentence of the Judge after both parties have been heard.

It is obvious that no trial could be had if any of the foregoing essentials were omitted.

272. The solemnities, or accidental parts of a trial, may be described as those details of pro-

cedure provided by Canon Law to eliminate the possibility of error in the proofs submitted by the parties.

Since in the cases which may be summarily tried the proofs must be self-evident (*see* Can. 1990), therefore solemnities are unnecessary in establishing them and would merely cause delay. For this reason Canon Law permits the omission of the solemnities in these cases.

Hence, the difference between a Solemn trial and a Summary trial consists only in the method of presenting the case to the Court, and not in the merits of the cause, which are as serious and as well considered in the Summary as they are in the Solemn trial.

273. Canon 1990 permits a marriage case to be tried in a summary manner when it is evident that the marriage was made invalid ab initio by the impediments of *disparity of cult, Holy Orders, solemn vow of chastity, marriage bond, consanguinity, affinity* and *spiritual relationship.*

274. However, two conditions must be present:

1. The existence of the impediment must be made apparent by positive and authentic documents concerning which no question can be raised and which preclude any doubt as to the truth of their contents.

2. It must also be shown by authentic docu-

ments equally as positive as the foregoing that no dispensation has been granted removing the impediment.

In these cases the Ordinary may dispense with all the solemnities and declare the marriage null after citing and hearing the parties and the Defensor Vinculi.

275. The Defensor Vinculi must appeal the case to the Appellate Court if in his opinion either the existence of the impediment or the lack of a dispensation has not been shown with absolute certainty. When the record is sent to the Appellate Court, the Appellate Judge must be notified that the trial has been summary because it involves one of the causes specified in Canon 1990.

276. The Appellate Judge should proceed summarily, with the intervention and co-operation, however, of the Defensor Vinculi of the Appellate Court. If the Judge is satisfied with the proofs, he should affirm the judgment of the lower Court. If, on the other hand, he is not satisfied that the proofs are certain, he must remand the case to the lower Court to be tried in solemn form. The Appellate Judge's dissatisfaction with the proofs would show that the proofs were not self-evident, and therefore the case would not be included among those specified in Canon 1990 as exempted from solemn trial.

CAN. 1990. Cum ex certo et authentico documento, quod nulli contradictioni vel exceptioni obnoxium sit, constiterit de exsistentia impedimenti disparitatis cultus, ordinis, voti sollemnis castitatis, ligaminis, consanguinitatis, affinitatis aut cognationis spiritualis, simulque pari certitudine apparuerit dispensationem super his impedimentis datam non esse, hisce in casibus, praetermissis sollemnitatibus hucusque recensitis, poterit Ordinarius, citatis partibus, matrimonii nullitatem declarare, cum interventu tamen defensoris vinculi.

CAN. 1991. Adversus hanc declarationem defensor vinculi, si prudenter existimaverit impedimenta de quibus in can. 1990 non esse certa aut dispensationem super eisdem probabiliter intercessisse, provocare tenetur ad judicem secundae instantiae, ad quem acta sunt transmittenda quique scripto monendus est agi de casu excepto.

CAN. 1992. Judex alterius instantiae, cum solo interventu defensoris vinculi, decernet eodem modo de quo in can. 1990, utrum sententia sit confirmanda, an potius procedendum in causa sit ad ordinarium tramitem juris; quo in casu eam remittit ad tribunal primae instantiae.

277. The following procedure may be used in Summary Trials.

The plaintiff may either present to the Court his petition drawn according to Form 5; or he may appear personally before the Secretary of the Matrimonial Court and orally state his petition, which it is the duty of the Secretary to write out.

(*Form 95, page 238.*)

278. At the same time, the plaintiff should file with the Court the documents proving the truth of his contentions. For instance, if he claims

that the marriage is invalid on account of the impediment of blood relationship in the third degree, he should file all the legal documents (marriage and baptismal records, affidavits, etc.) showing the degree of relationship, together with the statements of the parish priest of the church where the marriage was celebrated and of the diocesan Chancellor certifying that no dispensation had been granted at the time of the marriage and that there had been no dispensatio in radice.

279. The Secretary then gives a number to the case and notifies the Officialis.

The Officialis orders the documents to be sent to the Defensor Vinculi for his examination.

(*Form 96, page 239.*)

280. The Secretary sends the documents to the Defensor Vinculi together with the notice.

(*Form 97, page 240.*)

281. The Defensor Vinculi gives his opinion.

(*Form 98, page 240.*)

282. The Officialis issues a decree accepting the case and summoning the party litigants to appear before the Court.

(*Form 99, page 242.*)

He issues the usual citations to the party litigants, and notifies the Defensor Vinculi to be present at the hearing.

(*Form 100, page 243.*)

283. Should there be any serious reason preventing the plaintiff and the defendant from appearing together, the Officialis may examine each one separately. The Defensor Vinculi must be present at the examination of each party.

284. After the parties have been heard and the proofs examined, if these proofs are found to be absolutely certain, and if the Defensor Vinculi does not object to their admission, the Judge gives his decision and pronounces sentence. This sentence is rendered as in Form 66, and published as in No. 225.

285. If the Defensor Vinculi does not appeal within ten days to the Metropolitan Court, the sentence is executed in the usual manner, and notices are sent to the various parish priests whose duty it is to enter the sentence in the baptismal and marriage record books.

PART III

FORMULARY

Form 1

OATH OF OFFICE

In nomine Domini. Ego, N. N. spondeo, voveo ac juro me munus Officialis (Vice-Officialis, Judicis Synodalis, Auditoris, Notarii, Actuarii, Defensoris Vinculi, Promotoris Justitiae, Cursoris, Apparitoris, Interpretis) mihi commissum in hac Curia Matrimoniali .....[1] sedulo ac diligenter impleturum; munera mihi in remunerationem, etiam sub specie doni oblata, non recepturum; et secretum officii religiose servaturum in iis omnibus quae Sacri Canones aut Superiores secreta servari jusserint, et quando ex revelatione alicujus actus praejudicium partibus aut Ecclesiae obvenire potest. Sic Deus me adjuvet.

Form 2

APPROBATION OF LAWYER

By virtue of our office as Ordinary of the Diocese of .....

[1] hac in praesenti causa matrimoniali inter N. N., actorem, et N. N., partem conventam.

IT IS ORDERED that ..... (*name of lawyer*) be and he is hereby recognized as a practitioner before the Diocesan Matrimonial Court of the Diocese of ....., and is allowed to take part in all cases coming before said Matrimonial Court in which he may be engaged.

Given under our hand and seal,
from our Episcopal Residence,
....., (*name of the place*)
this the ..... day of ....., 19...

.....
Ordinary.

.....
Chancellor.

Form 3

APPOINTMENT OF PROCURATOR

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF .....

Your petitioner with respect represents to this Honorable Court that he (she) has this day appointed ..... (*name of Procurator*) as his (her) Procurator for the purpose of appearing for him (her), and on his (her) behalf and in his (her) place and stead before this Honorable Tribunal.

Your petitioner further represents that he

(she) fully authorizes the said ..... (*name of Procurator*) and files this petition for the purpose of establishing said authority, and of making a permanent record of same.

Your petitioner further represents that he (she) has discussed this matter with the said .....(*name of Procurator*) and he, the said.....(*name of Procurator*) has agreed to represent him (her) as aforesaid. And in order that the said agreement may be shown and a permanent record of same kept in these proceedings, he, the said .....(*name of Procurator*) has signed this petition with your petitioner in the presence of the undersigned witnesses.[1]

Wherefore your petitioner prays, that the said .....(*name of Procurator*) be duly accepted as his (her) Procurator with full authority to represent him (her) in these proceedings, that said Procura-

[1] When the Procurator is also to act as the lawyer, the following clause should be added to the petition before the prayer:

Your petitioner further represents that ..... who has agreed to act as his (*or* her) Procurator, will also act as his (*or* her) lawyer; that the said ..... (*name of Procurator*) has been recognized as a general practitioner before this Honorable Court, and that he has authority to appear in every cause coming before it in which he may be employed.

When the Procurator is not a recognized ecclesiastical lawyer and it is desired that he should act also as the lawyer in the case, it is necessary that his appointment as lawyer be approved by the Ordinary of the Diocese. Therefore it is necessary to present to the Bishop the petition, Form 24, as in the case of any other person not recognized as a practicing lawyer before the Matrimonial Court.

tor's name be placed in this record and that all notices be sent to him whenever and for whatever purpose your petitioner's presence or action is necessary for the proper adjudication of this cause.

.....
(*Name of the place.*)
this the ..... day of ....., 19...
(*Petitioner's name.*)
(*Address.*)

I accept the appointment of Procurator as provided for in the above petition.

(*Procurator's name.*)
(*Address.*)

We hereby testify that we have witnessed the signature of ..... (*name of petitioner*) and of ..... (*name of Procurator*) to the above petition.

.....
.....
Witnesses.

Form 4

AUTHENTIC COPY OF DOCUMENT

Ego, infrascriptus Parochus Ecclesiae ..... (*nomen Ecclesiae*), in urbe....., et Dioecesi..... fidem facio qualiter in libro Matrimoniorum (Baptis-

morum) dictae Ecclesiae, Vol. ....., fol. ....., adest sequens particula:

(*Certificate of Marriage or Baptism, etc., as contained in the record book*)

In quorum fidem praesentes litteras mea manu subscripsi et sigillo ecclesiae parochialis munivi.

Datum ex Aedibus Parochialibus Sti....., ... (*Nomen urbis*)
die .....a ..... 19...

.....
Parochus.

(SIGILLUM)

Form 5

PLAINTIFF'S PETITION

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF.....

The petition of .....(*name of Procurator*) who resides at..... (*address*), herein appearing and acting as agent and Procurator of .....(*name of principal*), who resides at ..... (*address of principal*), and having express and special power to represent said..... (*name of principal*), in all judicial proceedings in the Matrimonial Court for the Diocese of ....., as shown by a duly certified copy of the Power of Attorney dated.....

(*give date of procuration*) annexed hereto and made part thereof, respectfully represents:

FIRST

That plaintiff was married in the Parochial Church of....., City of....., Diocese of....., on the..... day of....., 19..., to ..... (*name of defendant*), who resides at..... (*address of defendant*).

SECOND

Petitioner further shows that.....

(*Indicate the diriment impediment invoked as reason for the nullity of the marriage.*)

THIRD

Petitioner further represents that.....

(*Expose briefly and clearly the facts and allegations.*)

FOURTH

Petitioner further represents that..... etc.

WHEREFORE, petitioner prays that he may be authorized to institute and prosecute this action; that defendant be cited to appear and answer this petition; and that, after due proceedings had, there be a final judgment herein

in favor of plaintiff and against said defendant, decreeing the Nullity of the Marriage between them and declaring plaintiff free to contract another marriage.

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
Procurator.

AFFIDAVIT
to be added to Petition

Personally came and appeared before me, the undersigned authority, ... (*name of plaintiff*), who, being duly sworn, deposes and says that he (she) is the plaintiff in the above and foregoing petition, and that, to the best of his (her) knowledge, all the facts and allegations therein contained are true and correct.

.....
Petitioner.

Sworn to and subscribed before me,
this the ..... day of ....., 19...

.....
Secretary (or Notary).

FORM 6

PETITION "IN FORMA PAUPERIS"

In a petition "in forma pauperis," the following allegation must be added to the petition (Form 5):

"Petitioner further represents that the plaintiff is unable because of his (her) poverty and lack of means, to pay the present or future costs of this litigation; and that he (she) is entitled to all the benefits of the provisions of Book IV, Part I, Title XVI, Chapter II of the Code of Canon Law, providing for suits 'in forma pauperis.'"

WHEREFORE, petitioner prays.....

AFFIDAVIT

of third person to be added to the petition "in forma pauperis"

Personally came and appeared before me, the undersigned authority, ... (*name of affiant*) who, being duly sworn deposes and says:

That he is well acquainted with .... (*name of plaintiff*) and knows his (her) financial condition. That said plaintiff is unable, because of his (her) poverty and lack

of means, to pay the present or future costs of this suit.

.....
Affiant.

Sworn to and subscribed before me,
this the ..... day of ....., 19...

.....
Secretary (or Notary).

Form 7

FILING OF PETITION

Hodie recepta est petitio a Dno ....., Procuratore actoris ....., ad Hanc Curiam Matrimonialem ..... directa, qua dictus ..... (*nomen actoris*) decretum petit nullitatis matrimonii sui cum ..... (*parte conventa.*)

Praefatae petitioni haec adnexa sunt documenta:

1. Fides matrimonii inter ..... (*actorem*) et ..... (*partem conventam*).
2. Fides baptismi ..... (*actoris*).
3. .....
4. .....

Haec causa numerata est "1" inter causas Tribunalis primae instantiae Hujus Curiae Matrimonialis .....

Et dicta petitio, simul cum omnibus adnexis documentis, ad Revmum ....., Officialem Curiae Matrimonialis ..... a me, infrascripto Actuario, hac die delata est.

Datum ex Aedibus Cancellariae,
die .....a, ..., 19...

.....
Actuarius.

FORM 8

HEADING TO BE USED ON EACH PAGE OF THE RECORD

IN RE
Nullity of Marriage

Matrimonial Court
for the Diocese of
.....

Number: 1

Patrick MURPHY (*name of plaintiff*)
vs.
Anna LYNCH (*name of defendant*)

FORM 9

LITTERAE AD PAROCHUM PRO RECONCILIATIONE CONJUGUM

Ad Rev. .....
Parochum Ecclesiae .....,

Reverende Domine:

Ego, infrascriptus Officialis Curiae Matrimonialis ....., adnexum libellum

..... (*name of petitioner*), actoris, transmitti jussi ad te, Parochum ejusdem ..... (*name of petitioner*); tibique committo ut reconcialiationem dicti actoris cum ..... (*name of defendant*), conjuge, pro viribus et pastorali prudentia, per te aut per alium, cures.

Quatenus vero praefati conjuges ad concordiam adduci nequeant, faveas Hanc Curiam Matrimonialem instructam reddere de probitate et credibilitate tam viri quam uxoris, necnon de circumstantiis a te notis, quae Hanc Curiam adjuvare poterunt in indaganda veritate factorum.

Addictissimus in Christo,

Datum ex Aula Curiae Matrimonialis,
die .....a, ..., 19...

.....
Officialis.

.....
Actuarius.

Form 10

ORDER FOR THE APPOINTMENT OF THE ASSOCIATE JUDGES

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of ....., the case of ..... (*plaintiff*) *vs.* .....

(*defendant*) having been presented to this Court for adjudication

IT IS ORDERED, that

Rev. ....., Synodal Judge, and
Rev. ....., Synodal Judge,

be and they are hereby appointed as Associate Judges for the consideration and determination of this cause.[1]

IT IS FURTHER ORDERED that a copy of the petition herein filed be served upon each of the said Associate Judges, and upon the Defensor Vinculi, Rev. .....

IT IS FURTHER ORDERED, that a meeting of the Judges in this Court shall be held in the Court-room, on the ..... day of ..... 19.., at the hour of ..... o'clock.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

[1] IT IS FURTHER ORDERED that Rev..... be and he is hereby appointed as Vice-Official in this cause.

Form 11

NOTICE OF APPOINTMENT OF ASSOCIATE JUDGE

Rev. .....,
Synodal Judge,
(*Address.*)

Reverend and dear Father:

The case of ....., plaintiff, *vs.* ....., defendant, having been presented for adjudication to the Matrimonial Court for the Diocese of ..... it is my duty as Secretary of the Court in the above numbered and entitled cause to inform you that an order has been issued by the Very Rev. ....., Officialis, appointing you as Associate Judge for the consideration and determination of this cause.

You are further notified that a meeting of the Judges will be held at Court on the ..... day of ..... 19.., at the hour of ..... o'clock.

The purpose of this meeting is to determine whether or not the petitioner has the right to litigate the validity of said marriage, and whether or not this Honorable Court has jurisdiction in this cause.

A copy of the petition accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 12

ORDER FOR THE NOMINATION OF OFFICERS

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of ....., the case of ..... plaintiff, *vs.* ..... defendant, having been presented to this Court for adjudication,

IT IS ORDERED that

Rev. ....., Synodal Judge, and

Rev. ....., Synodal Judge,

be and they are hereby appointed as Associate Judges for the consideration and determination of this cause.

IT IS FURTHER ORDERED that Rev. ..... be and he is hereby nominated and appointed Defensor Vinculi (or Secretary, or Cursor) in this cause.

IT IS FURTHER ORDERED that a copy

of the petition herein filed be served upon each of the said Associate Judges, and upon the Defensor Vinculi.

IT IS FURTHER ORDERED that a meeting of the Judges of this Court will be held at the Secretary's office, on the ..... day of ..... 19.., at the hour of ..... o'clock.

Given at the Secretary's Office,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

Form 13

LETTER OF APPOINTMENT OF OFFICER

Rev. .....,
(*Address.*)

Reverend and dear Father:

The case of ....., plaintiff, *vs.* ....., defendant, having been presented for adjudication to the Matrimonial Court for the Diocese of ....., it is my duty as Secretary of the Court in the above numbered and entitled cause to inform you that an order has been issued by the Very Rev. ....., Officialis, nominating and ap-

pointing you as Defensor Vinculi (or Cursor, etc.) in this cause.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 14

NOTICE TO DEFENSOR VINCULI

Rev. .....,
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

The case of ....., plaintiff, *vs.* ....., defendant, having been presented for adjudication to the Matrimonial Court for the Diocese of ....., it is my duty as Secretary of the Court in the above numbered and entitled cause, to inform you that on the ..... day of ..... 19 .., an order has been issued by this Court directing me to serve upon you as Defensor Vinculi a copy of the plaintiff's petition which has been submitted to this Court.

It will be your duty to consider the foregoing petition, and to determine whether or not, in your judgment, the petitioner has the right to

litigate the validity of said marriage, and whether or not this Court has jurisdiction in this cause.

Your report must be made in writing and be brought by you to this Court, at the session to be held at Court on the ..... day of ..... 19.., at the hour of ..... o'clock.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 15

OPINIO DEFENSORIS VINCULI

Cum, litteris ad me die ..... a mensis ..... 19.. directis, a Revdo ....., Revmae Curiae Matrimonialis .....Officiali, mandatum acceperim declarandi quid sentiam

1. de jure ....., actoris, accusandi matrimonium suum cum ....., parte conventa; et

2. de competentia Hujus Revmae Curiae hac in causa;

Omnibus rite et attente consideratis, re-

verenter quae sequuntur Huic Revmae Curiae Matrimoniali submitto:

(*Defensor Vinculi tunc dat opinionem suam.*)

v.g.,

1. ....., actorem, jus habere matrimonium accusandi, ex can. 1971 § 1.

2. Hanc Revmam Curiam Matrimonialem ..... competentiam habere hac in causa, ex Can. 1964.

.....

(*Nomen urbis*),
die .....a ....., 19...

.....
Def. Vinc.

Form 16

DECREE OF ACCEPTANCE OF PLAINTIFF'S PETITION

ORDER

Considering the petition that has been filed in this case by ....., Procurator of ....., plaintiff in said cause, and considering the Canon Law applicable thereto, and after having heard the Defensor Vinculi, Rev. ....., he interposing no objections,

IT IS ORDERED, ADJUDGED AND DECREED by this Court that this Court has juris-

diction over the subject matter of this case, and that the trial be proceeded with in conformity with the prescriptions and regulations of Canon Law.[1]

IT IS FURTHER ORDERED that the petitioner or his Procurator be notified of the ruling of this Court.

IT IS FURTHER ORDERED that the defendant, ..., in accordance with the procedure of Canon Law, be notified of the ruling of this Court, and that he be summoned to make his appearance and, if he so desires, file exceptions to the jurisdiction of this Court, or to the person of the Judges, if any objections he may have, or file his answer to the petition of the plaintiff. All or either of which must be done within ..... days from the service of this notice.

The defendant should be further notified that his failure to appear, or to file his answer, or to present a valid excuse either for his non-appearance or his not filing an answer, will cause him to be declared contumacious, and upon the petition of the Defensor Vinculi, the trial will be proceeded with in the same manner as though the defendant were present.

[1] If the petition has been filed "in forma pauperis," insert here: IT IS FURTHER ORDERED that, considering the affidavits herein filed, the petitioner herein be, and he is hereby, authorized and permitted to prosecute this cause without payment of costs present or future, in accordance with the prescription of the Code of Canon Law, Book IV, Part I, Title XVI, Chapter II.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Associate Judge.

.....
Associate Judge.

.....
Secretary.

Form 17

ORDER FOR THE APPOINTMENT OF AN AUDITOR

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of .....,[1] the case of ....., plaintiff, *vs.* ....., defendant, having been presented to this Court for adjudication,

IT IS ORDERED that Rev. ....., Synodal Judge, be and he is hereby appointed as Auditor in and for this cause.

IT IS FURTHER ORDERED that it will be his duty to cite and hear the witnesses and to render such orders as may be necessary to do so; to receive and pass upon the authenticity of all

[1] Or: as Vice-Official in the above numbered and entitled cause,

documents which may be filed in the case; to prepare the case so that it may be conveniently and readily presented to the Court for its determination; and to render the order closing the trial of the case. With the rendition of this order the Auditor will cease to function.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis (*or* Vice-Official).

.....
Secretary.

Form 18

NOTICE OF THE APPOINTMENT OF AUDITOR

Rev. .....,
Synodal Judge,
(*Address.*)

Reverend and dear Father:

The case of ....., plaintiff, *vs.* ....., defendant, having been presented for adjudication to the Matrimonial Court for the Diocese of ....., it is my duty as Secretary of the Court in the above numbered and entitled cause to inform you that an order has been issued by the Rev. ....., Officialis, appointing you as Auditor in and for this cause.

A copy of this order is annexed hereto.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

FORM 19

MINUTES OF THE FIRST SESSION

Sessio 1

In Dei nomine. Amen.

Anno Domini 19..., die.....a ....., hora ....., in aula sessionum Hujus S. Tribunalis, ..., adsunt:

Rev. ....., Officialis,
Rev. ....., Judex Collegialis,
Rev. ....., Judex Collegialis,
Rev. ....., Defensor Vinculi,
Rev. ....., Actuarius.

De mandato Revdi Officialis, Rev. Actuarius decretum communicat quo Rev. ..... et Rev. ....., Judices Collegiales nominantur.

Deinde Rev. ....., Officialis, nominat Revum ....., Ponentem in praesenti causa.

Tunc Rev. Ponens legit instrumentum quo, ad normam SS. Canonum, ...,

Actor, ..., Procuratorem nominat.

Postea Rev. Ponens supplicem libellum legit, die .....a ....., 19..., Huic Curiae Matrimoniali oblatum, quo actoris Procurator petit ut instruatur causa, et declaretur nullum ex capite ..... (*impedimenti dirimentis*) matrimonium inter....., actorem, et ....., partem conventam.

Tunc decernendum venit de habilitate actoris ad accusandum matrimonium, et de jurisdictione Hujus Curiae hac in causa. De mandato Revdi Officialis, Revdus ....., Defensor Vinculi, opinionem suam et argumenta exponit in causa, quae sub No. ..... actorum consignata inveniuntur.

Audito Defensore, atque discussis causae meritis, Revdi Judices affirmativum edunt decretum.

Quibus peractis, decernunt pariter Revmi Judices ut exemplar libelli introductorii intimetur ....., parti conventae, dictaque pars conventa citetur ut intra decem dies se praesentet coram Hoc S. Tribunali, ut objectiones et exceptiones, si quas habeat, offerat, vel formalem contradictionem petitioni actoris Huic Curiae afferat.

Item decernunt Revmi Judices ut acceptatio

libelli et citatio partis conventae notae fiant actori vel ejus Procuratori.

De quibus omnibus decretum exarat Rev. Ponens quod a Revmis Judicibus Collegialibus subscriptum sub No. ..... actorum consignatum invenitur.

Tunc Revdus Praeses Tribunalis Revdum ....., Auditorem nominat hac in causa, qui partes et testes audiat atque acta omnia instruat ad decretum usque conclusionis in causa inclusive.

De his omnibus redacta est praesens relatio, quae ab omnibus Tribunalis membris subscribitur.

Datum ex Aula Sessionum
Curiae Matrimonialis .....,
die ..... a ....., 19...

.....
Officialis.

.....
Judex Coll.

.....
Judex Coll.

.....
Def. Vinc.

.....
Actuarius.

FORM 20

CITATION OF DEFENDANT

Mr. .....,
(*Address.*)

By virtue of the authority vested in me as Auditor in the above numbered and entitled cause,

You are hereby notified that the petition of .....(*name of plaintiff*), of which copy accompanies this notice, has been admitted by this Court, and that the petitioner has been authorized to institute and prosecute this suit, and to stand in judgment therein as prayed for and according to law.

The following Judges have been appointed to act in this cause according to the provisions of Canon Law:

Rev. ....., Officialis,
Rev. ....., Associate Judge.
Rev. ....., Associate Judge.
Rev. ....., is the Defensor Vinculi.

You have the right to appoint a Procurator who will properly represent you in these proceedings. If you do not know any person qualified to act as Procurator for you, and you will so notify this Court, a Procurator will be appointed for you.

You have the further right to select and ap-

point a lawyer approved by the Right Rev. ....., Bishop of the Diocese of....., according to the directions given by Canon Law.

You have the right to file objections, if any you may have, to the jurisdiction of this Court, or to the persons of the Judges and of the Defensor Vinculi, or any other exceptions allowed by Canon Law, all of which must be done within ..... days from the service of this notice.

In the absence of exceptions, you are hereby summoned to deliver your answer to the plaintiff's petition in writing, and to file it in the office of the Secretary of this Court, ... (*address*), within ..... days from the service of this notice.

In accordance with the provisions of Canon Law, Rev. ..... (*name and address of Defensor Vinculi*) has been appointed as Defensor Vinculi to uphold the validity of this marriage. You may either write to him or see him in person, and he will fully advise you as to your rights under Canon Law, and the procedure which you must follow in order to assert them.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 21

CITATIO EDICTALIS

CITATIO

Cum ignoretur locus actualis commorationis ....., filiae ..... et ....., in hac causa conventae, oriundae ex loco vulgo .....Dioecesis ....., quae anno ..... degebat in loco ....., via ....., num. ....., per hoc edictum praefatam mulierem peremptorie citamus ad personaliter comparandum, anno ....., mense ....., die ....., hora ....., in aedibus Hujus S. Tribunalis, via ....., num. ....., coram infrascripto Auditore, ad depositionem faciendam, secundum SS. Canones, in hac causa assertae nullitatis matrimonii dictae ....., partis conventae, cum ....., actore.

Quod nisi compareat die et hora designatis, neque absentiae vel suae rationis agendi excusationem attulerit, contumax habebitur, et, ea absente, ad ulteriora procedendum erit, instante Revdo Defensore Vinculi in eadem causa.

Ordinarii locorum, parochi, sacerdotes et fideles quicumque notitiam habentes de domicilio aut commorationis loco praefatae mulieris, curare debent, si et quatenus fieri possit, ut de hac edictali citatione ipsa moneatur.

Datum ex Aula Sessionum
Curiae Matrimonialis .....,
die ..... a ....., 19...

.....
Auditor.

.....
Actuarius.

Form 22

NOTICE TO PLAINTIFF'S PROCURATOR

Mr. .....,
(*Address.*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ....., in the above numbered and entitled cause, to notify you that your petition filed with this Court on the ..... day of ....., 19..., has been admitted by this Court, and that you are authorized to institute and prosecute this suit, and to stand in judgment therein, as within prayed for and according to law.

You are further notified that the defendant ....., has been summoned to appear and file his (her) answer to your petition within ..... days from the service of the citation. You may apply in due time for a copy of the answer filed by the defendant.

The following Judges have been appointed to act in this cause according to the provisions of Canon Law:

Rev. ....., Officialis,
Rev. ....., Associate Judge.
Rev. ....., Associate Judge.
Rev. ....., is the Defensor Vinculi.

Unless an objection valid in Canon Law is made by you or by the defendant to these Judges and the Defensor Vinculi, they will constitute the Court which will try this cause.

Secretary's Office,
this the.....day of.....19....

.....
Secretary.

Form 23

APPOINTMENT OF LAWYER ALREADY APPROVED BY THE ORDINARY

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF .....

Your petitioner with respect represents to this Honorable Court that he (she) has this day appointed ..... (*name of lawyer*) as his (her) lawyer; that the said ..... (*name of lawyer*) has been recognized as a practicing attorney before this Honorable Diocesan Matrimonial Court, and has authority to appear in any case coming before it in which he may be engaged.

Your petitioner further represents that he (she) fully authorizes the said..... (*name of lawyer*) to act as his (her) lawyer in

the above numbered and entitled cause, and files this petition for the purpose of establishing said authority and of making a permanent record of same.

Your petitioner further represents that he (she) has discussed the matter with the said .....(*name of lawyer*), and that the said ..... (*name of lawyer*) has agreed to act as his (her) lawyer. And in order that the said agreement may be shown and a permanent record of same kept in these proceedings, he, the said lawyer, has signed this petition with your petitioner in the presence of the undersigned witnesses.

(*Name of the place.*)
this the ..... day of ....., 19...

.....
(*Petitioner's name and address.*)

I accept the appointment of lawyer as provided for in the above petition.

.....
(*Lawyer's name and address.*)

We hereby certify that we have witnessed the signatures of ..... (*name of petitioner*) and of ....., (*name of lawyer*), to the above petition.

.....
.....
Witnesses.

FORM 24

APPLICATION FOR ORDINARY'S APPROVAL OF A LAWYER

TO THE RIGHT REVEREND.....
(*Name of the Bishop*)
BISHOP OF .....

Your petitioner with respect represents that he (she) has this day appointed ..... (*name of lawyer*) to act as his (her) lawyer in the case pending in the Matrimonial Court for the Diocese of ....., between (*name of opposing party*) and himself (herself); that the said ..... (*name of lawyer*) has not been recognized as lawyer in the said Matrimonial Court.

Your petitioner further represents that it is necessary for your petitioner to have the services of the said ..... (*name of lawyer*) as his (her) lawyer for the following reasons: ..... (*state the reasons*).

Your petitioner further represents that the said ..... (*name of lawyer*) has accepted your petitioner's mandate to act as his (her) lawyer and has signed this petition with your petitioner in presence of the undersigned witnesses.

WHEREFORE, your petitioner prays that the said ..... (*name of lawyer*) be

authorized to act as his (her) lawyer in this case now pending in the Matrimonial Court.

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
(*Name of petitioner.*)

.....
(*Address.*)

I agree to act as lawyer for ..... (*name of petitioner*) in this case, if approved by the Right Rev. ....., Bishop of .....

.....
(*Lawyer's name and address.*)

We hereby certify that we have witnessed the signature of .....(*name of petitioner*) and of ..... (*name of lawyer*) to the above petition.

.....
.....
Witnesses.

FORM 25

ORDINARY'S APPROVAL OF A LAWYER

By virtue of our office as Ordinary of the Diocese of .....,

IT IS ORDERED that ..... (*name of lawyer*) be and he is hereby authorized to act as lawyer in the case of .....

(*name of plaintiff*) *vs.* .....
(*name of defendant*), now pending in the matrimonial Court for the Diocese of .....

Given under our hand and seal,
from our Episcopal Residence,
....., (*name of the place*)
this the ..... day of ....., 19...

.....
Ordinary.

.....
Chancellor.

Form 26

APPOINTMENT OF A LAWYER AUTHORIZED BY THE ORDINARY TO ACT IN A CERTAIN CAUSE

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF.....

Your petitioner with respect represents to this Honorable Court that he (she) has appointed ..... (*name of lawyer*) to act as his (her) lawyer in this case.

Your petitioner further represents that he (she) annexes hereto a copy of the petition which he (she) presented to the Right Reverend ....., Bishop of ....., and which has been signed by the said ..... (*name of lawyer*) agreeing to act as your petitioner's lawyer in the event he was authorized by the Right Reverend Bishop to do so.

Your petitioner further represents that he (she) has obtained an order from the Right Reverend ....., authorizing the said ..... (*name of lawyer*) to act as lawyer for your petitioner herein, the original of said order being annexed hereto and made part hereof.

WHEREFORE, your petitioner prays that the appointment of ..... (*name of lawyer*) as lawyer, his agreement to serve as such, and the order of the Right Reverend ..... (*name of the Bishop*) authorizing him to do so, be duly accepted and placed in the record of this case.

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
(*Petitioner's name.*)

.....
(*Procurator's name.*)

Form 27

ANSWER OF DEFENDANT

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF .....

Now into Court, through his (her) undersigned Procurator, comes ..... (*name of defendant*), made defendant in the above

numbered and entitled cause, and for answer to plaintiff's petition says:

FIRST

That he (she) admits (*or* denies) Article I of plaintiff's petition.

SECOND

That he (she) has no knowledge of the facts alleged in Article II of the petition, and hence denies same.

THIRD

. . . . . ,

and so on, admitting or denying specifically each article of the petition.

SIXTH

And further answering, respondent avers (*state in separate articles whatever special defenses are relied on by defendant*).

WHEREFORE, respondent prays for judgment in his (her) favor and against . . . . . , (*name of plaintiff*), the plaintiff herein, rejecting the said plaintiff's demand, with costs.

And for all general and equitable relief, etc.

. . . . . .

(*Name of the place*),
this the . . . . . day of . . . . . , 19. . .

. . . . . .

Procurator.

AFFIDAVIT

to be added to Answer

Personally came and appeared before me, the undersigned authority, ..., (*name of defendant*), who, being duly sworn, deposes and says that he (she) is the defendant in the above numbered and entitled cause; that he (she) has read the above and foregoing answer, and that, to the best of his (her) knowledge, all the facts and allegations therein set forth are true and correct.

.....
Affiant.

Sworn to and subscribed before me,
this the ..... day of ....., 19...

.....
Secretary (*or* Notary).

FORM 28

ANSWER "IN FORMA PAUPERIS"

In answers filed "in forma pauperis," the following allegation must be added to the answer (Form 18):

Respondent further represents that he (she) is unable, because of his (her) poverty and lack of means, to pay the present or future costs of this litigation, and that he (she) is entitled to all the benefits of the provisions of Book IV, Part I, Title XVI, Chapter II of the Code of

Canon Law, providing for suits "in forma pauperis."

WHEREFORE, respondent prays.....

AFFIDAVIT

of third person to be added to the answer "in forma pauperis."

Personally came and appeared before me, the undersigned authority, ... (*name of affiant*), who, being duly sworn, deposes and says:

That he is well acquainted with ..... (*name of defendant*) defendant in this cause. That said defendant is unable, because of his (her) poverty and lack of means, to pay the present or future costs of this suit.

.....
Affiant.

Sworn to and subscribed before me,
this the ..... day of ....., 19...

.....
Secretary (*or* Notary).

FORM 29

DECREE OF CONTUMACY

ORDER

By virtue of my office as Auditor in the above numbered and entitled cause,

Whereas, the defendant ..... (*name of defendant*), though duly cited to appear and defend this suit, has failed to make an appearance in these proceedings, or to furnish this Court with a reasonable excuse for his (her) failing to appear; and,

Whereas, the Defensor Vinculi has petitioned this Court to declare the said defendant to be contumacious,

IT IS ORDERED by the Court that the said ..... defendant herein, be, and he (she) is hereby declared to be contumacious, and that this case be proceeded with according to the provisions of Canon Law.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 30

ORDER TO NOTIFY PLAINTIFF AND DEFENDANT TO PRODUCE THEIR EVIDENCE

By virtue of the authority vested in me as Auditor in the above numbered and entitled cause, the petition and answer in this cause having been filed, and the issue having been joined,

IT IS ORDERED that the plaintiff and the

defendant prepare questions to be propounded to and answered under oath by the opposing party litigant or any witness whom they may desire to have examined.

IT IS FURTHER ORDERED that the names and addresses of said witnesses shall be furnished to the Court, and that any documentary evidence which is to be used in the trial of this cause shall also be filed.

The filing of the questions, names and addresses of witnesses, and all documents must be so filed within ..... days from the notification of this order.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 31

NOTICE TO THE PLAINTIFF AND TO THE DEFENDANT AFTER THE JOINING OF ISSUE

.....(*Petitioner or defendant.*)
(*Address.*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ....., in the above numbered and entitled cause, to

notify you that, the petition and answer in this cause having been filed, the issue has been joined, and that you now have the right to propound questions to be answered under oath by ....., (*opposing party*) defendant (*or* plaintiff) herein.

You have the further right to prepare questions to be propounded to any witness whom you may desire to be examined. The names and addresses of said witnesses must be furnished to the Court.

All of said questions must be reduced to writing and filed with this Court. As soon as filed, the proper order will be signed commanding the parties to whom the questions are directed, to answer same under oath at the time which will be designated.

You have the further right to file any proofs which you may have in support of the allegations contained in your petition (answer).[1]

Any papers to be filed in accordance with this notice, or questions to be propounded, must be prepared and filed with the Secretary within ... days from the service of this notice.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

[1] To be added in certain cases:
If expert testimony, medical or otherwise, is necessary, you have the right to obtain it.

FORM 32

FILING OF QUESTIONS PREPARED BY THE DEFENSOR VINCULI

REVERENDISSIMAE CURIAE MATRIMONIALI
DIOECESIS .....

..... (*Nomen Defensoris Vinculi*), in causa assertae nullitatis matrimonii inter ....., actorem et ....., partem conventam, Defensor Vinculi legitime deputatus, exhibet sequentia interrogatoria, clausa et obsignata, et nonnisi in actu examinis ab Auditore aperienda, atque instat ut super iisdem examinetur ....., actor hac in causa, (vel ....., pars conventa) servata forma a jure statuta; alioquin protestatur, etc.

Haec cum facultate addendi, delendi, corrigendi, etc.

.....
(*Nomen urbis*)
die .....a ....., 19...

.....
Def. Vinc.

DECRETUM

Visa praefata petitione Revdi Defensoris Vinculi, Rev. ..... Auditor in causa assertae nullitatis matrimonii inter. ....

....., actorem, et ....., partem conventam, in jus vocari mandat..... ....., actorem (vel partem conventam) eique dici diem ..... am mensis ....., 19..., et horam ....., in aula sessionum Hujus S. Tribunalis, ... (*directio*), ut juratum examen subeat secundum interrogatoria ei proponenda.

Datum ex Aula Sessionum,
die .....a ....., 19...

.....
Auditor.

.....
Actuarius.

Form 33

APPLICATION FOR EXAMINATION OF OPPOSING PARTY

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF .....

Now into Court comes ..... (*name of plaintiff or defendant*) through his (her) Procurator ....., and, pursuant to the notice received by him (her) on the .... day of ....., 19..., informing him (her) of his (her) right to submit questions to have answered under oath by ....., defendant (plaintiff) in this cause, begs leave

of this Honorable Court to file, herewith, questions which he (she) desires to have propounded to said ..... (*name of defendant or plaintiff*).

Which said questions are annexed hereto and made part hereof.

And mover further prays for any and all orders which may be necessary to obtain the testimony of said defendant (plaintiff).

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
(*Name of mover.*)

ORDER

By virtue of the authority vested in me as Auditor in the above numbered and entitled cause,

....., the plaintiff (defendant) in this cause, through his (her) Procurator, having petitioned this Court that the evidence of ....., defendant (plaintiff) in this cause, be taken, and having filed with the said petition interrogatories to be propounded to the said party,

IT IS ORDERED by the Court that ..... be summoned to this Court on the ..... day of ....., 19..., at the hour of ..... for

the purpose of giving his (her) answers in the manner and form prescribed by Canon Law to the interrogatories herein filed by the said ..... (*name of petitioner*).

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 34

CITATION OF PARTY LITIGANT

.....(*Name of defendant or plaintiff.*)
(*Address.*)

By virtue of my office as Auditor in the above numbered and entitled cause, you are hereby notified that, in conformity with the rules of procedure prescribed by Canon Law, the Rev. ....., Defensor Vinculi, has prepared questions to be propounded to you; and that ....., the plaintiff (defendant) in this cause, has availed himself (herself) of his (her) right to examine you, has prepared a set of questions and has filed them with this Court.

You are hereby ordered therefore to present yourself at Court, ...(*address*),

on the ..... day of ....., 19..., at ..... o'clock, for the purpose of answering these questions.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 35

NOTICE TO DEFENSOR VINCULI TO BE PRESENT AT THE HEARING OF THE PARTIES

Rev. .....,
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause to notify you, the Defensor Vinculi, that a hearing in this cause has been fixed for the ..... day of ....., 19..., at the hour of ..... o'clock; at which time it is necessary that you be present at Court for the purpose of hearing the answers given by ....., plaintiff (defendant), to the questions which have been prepared to be propounded to the said .....

plaintiff (defendant), and which have been filed with this Court.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 36

APPLICATION FOR WITNESSES

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF .....

Now into Court comes ....., defendant (plaintiff), through his (her) Procurator ....., and pursuant to the notice received by him (her) on the ..... day of ....., 19..., informing him (her) of his (her) right to submit questions to be answered under oath by any witness whom he (she) may desire to have examined, begs leave of this Honorable Court to file herewith questions which he (she) desires to have propounded to the following named witnesses:

1. N. N. ....., (*address.*);
2. N. N. ....., (*address.*);

etc. .....

which said questions are annexed hereto and made part hereof.

And mover further prays for any and all orders which may be necessary to obtain the testimony of these witnesses.

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
(*Name of mover.*)

Form 37

NOTICE TO PARTY LITIGANT OF OPPOSING PARTY'S APPLICATION FOR WITNESSES

To .....,
(*Address.*)

By virtue of my office as Auditor in the above numbered and entitled cause, you are hereby notified that, in conformity with the rules of procedure prescribed by Canon Law, ..., plaintiff (defendant) in this cause has requested that the testimony of

1. .....(*Name and address.*);
2. .....(*Name and address.*);

etc. .....

should be taken in this cause.

You are further notified that it is your right and privilege to offer any valid objection which you may have to the person of these witnesses; that is, you may object if witnesses lack knowl-

edge of the matter at issue; are untruthful or are prejudiced either against you or in favor of the opposing party; or lack sufficient intelligence and proper understanding.

You must file these objections in written form within three days from the service of this notice.

Your objections must contain the reasons and the facts upon which they are based.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 38

DECREE GRANTING THE TAKING OF TESTIMONY

ORDER

By virtue of the authority vested in me as Auditor in the above numbered and entitled cause,

....., plaintiff (defendant), having presented to this Court the following names of witnesses whom he desires to be heard in this cause, viz.:

1. .....
(*Name and address of witness.*)
2. .....,
(*Name and address of witness.*)
etc. .....

and the opposing party having been notified of same and not having made any timely objections thereto,

IT IS ORDERED by the Court that the above named witnesses be summoned and their testimony taken in accordance with the prescriptions of Canon Law.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 39

CITATION OF WITNESS

To .....,
(*Address.*)

By virtue of my office as Auditor in the above numbered and entitled cause, you are hereby notified that, in conformity with the rules of procedure prescribed by Canon Law, questions have been prepared and filed with this Honorable Court to be propounded to you.

You are hereby summoned therefore to present yourself at the Chancery ..... (*address of the Chancery*), on the ..... day of ....., 19..., at ..... o'clock, for the purpose of answering these questions.[1]

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

Form 40

NOTICE TO DEFENSOR VINCULI TO BE PRESENT AT THE HEARING OF THE WITNESSES

Rev. .....,
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to notify you, the Defensor Vinculi, that a hearing in this cause has been fixed for the ..... day of ....., 19..., at the hour of ..... o'clock, at which time it is necessary that you be

[1] To be added according to circumstances:
"And hereof you are not to fail, under the penalty of Canon Law."

present at Court for the purpose of hearing the answers given by

..... (*Witness.*)
..... (*Witness.*)
..... (*Witness.*)
etc. .....,

to the questions which have been prepared to be propounded to the said witnesses, and which have been filed with this Court.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 41

APPLICATION FOR WITNESSES FILED BY DEFENSOR VINCULI

REVERENDISSIMAE CURIAE MATRIMONIALI DIOECESIS .....

....., in causa assertae nullitatis matrimonii inter ....., actorem, et ....., partem conventam, Defensor Vinculi legitime deputatus, exhibet sequentia interrogatoria, clausa et obsignata, et nonnisi in actu examinis ab Auditore aperienda, atque instat ut super iisdem examinentur:

1. ....,
(*nomen et directio testis*),
2. ....,
(*nomen et directio testis*),
etc. ....,

servata forma a jure statuta; alioquin protestatur, etc.

Haec cum facultate addendi, delendi, corrigendi, etc.

.....
(*Nomen urbis*)

die..... a..... 19....

.....
Defensor Vinculi.

DECRETUM

Visa praefata petitione Revdi Defensoris Vinculi, Rev. ....., Auditor in causa assertae nullitatis matrimonii inter..... ....., actorem, et ....., partem conventam, in jus vocari mandat:

1. ....,
(*nomen et directio testis*),
2. ....,
(*nomen et directio testis*),
etc. ....,

eisque dici diem ..... am mensis..... 19..., et horam ....., in aula sessionum Hujus S. Tribunalis, ...,

(*directio*), ut juratum examen subeant secundum interrogatoria eis proponenda.

Datum ex Aula Sessionum Tribunalis,
die .....a ....., 19...

.....
Auditor.

.....
Actuarius.

Form 42

OATH TO BE TAKEN BY A WITNESS BEFORE THE EXAMINATION

I solemnly swear before God that I will tell the truth, the whole truth, and nothing but the truth. So help me God and His Holy Gospels.

Form 43

GENERAL QUESTIONS

1. What is your name?
2. What is your father's and mother's name?
3. Where were you born?
4. How old are you?
5. What is your business or occupation?
6. What is your religion?
7. Where is your domicile?
8. In what parish do you live?

9. Are you a relative of ..... (plaintiff *or* defendant)?

Form 44

LIST OF QUESTIONS SUGGESTING INFORMATION WHICH USUALLY OUGHT TO BE OBTAINED BY THE DEFENSOR VINCULI OR BY THE COURT

1. Do you know the families of both of the litigants?
2. How long have you known them?
3. What is the character of the plaintiff and of the defendant?
4. (*When vis and metus are the reason given for the petition of nullity*) What is the character of the parents of each party?
5. When did the plaintiff and defendant become acquainted with each other?
6. When did they become engaged to be married?
7. How did the plaintiff and defendant act toward each other during that engagement?
8. What was the attitude of both families toward that engagement?
9. Did the plaintiff and defendant give presents to each other during their engagement?
10. When was the marriage celebrated?
11. Where was it celebrated?

12. Who performed the ceremony?
13. Were you present at the celebration?
14. Did anything unusual happen before, during or after the ceremony?
15. Was there a wedding banquet, feast or dance?
16. Was there a honeymoon trip?
17. Where?
18. How long did it last?
19. Did anything unusual happen during this honeymoon trip?
20. Where did the couple establish their domicile?
21. How long did they live together?
22. Did they live peacefully or did they quarrel?
23. What was the cause of these quarrels?
24. When did the plaintiff and the defendant separate for the first time?
25. How did they come to be reconciled?
26. When did the final separation occur?
27. Which of the two parties abandoned the other?
28. Is there any hope of reconciliation?
29. Do you know of any person who can be called as a witness?
30. Have you any documents bearing on this case?
31. Are the plaintiff and the defendant persons worthy of belief?

32. What reasons have you for stating that they are (*or* that they are not)?
33. Do you know the circumstances of this case?

Form 45

OATH TO BE ADMINISTERED IN SOME CASES TO THE WITNESS AFTER HIS TESTIMONY

I ....., swear before God that in the foregoing testimony I have told the truth, the whole truth and nothing but the truth. I swear also that I will keep secret until the conclusion of this case both the questions propounded to me, and the answers which I have given. So help me God and His Holy Gospels.

Form 46

TO BE ADDED TO THE TESTIMONY OF A WITNESS

Absoluto examine, de mandato Revdi Auditoris, integra depositio clara voce testi legitur, et Auditor eumdem interrogat an sit aliquid addendum, supprimendum, corrigendum, variandum.

Deinde a teste petit Revdus Auditor [1] ut jus-

[1] If the oath "de veritate dictorum" has been taken by the witness.

jurandum praestet de veritate dictorum et de secreto servando juxta formam praescriptam.

Tunc subscribunt Testis, Auditor, Defensor Vinculi et Actuarius.

Datum ex Aula Sessionum,
Curiae Matrimonialis .....
die .....a ....., 19...

.....
Testis.
.....
Auditor.
.....
Def. Vinc.
.....
Actuarius.

Form 47

MINUTES OF THE SESSION

In Dei nomine. Amen.

Anno Domini 19..., die .....a mensis ....., hora .....a, in aula sessionum Hujus Tribunalis, adsunt:

Rev. ....., Auditor,
Rev. ....., Defensor Vinculi,
Rev. ....., Actuarius.

Comparet ..... (*name of witness*), testis, pro hac die et hora rite et legitime citatus.

Auditor jusjurandum a teste petit et accipit, juxta formam praescriptam.

Postea ad examen testis procedit Auditor juxta interrogatoria a ....., actoris Procuratore (*vel* partis conventae Procuratore) praeparata, et apud Hoc Tribunal die ..... 19..., deposita. Quibus interrogatoriis respondet testis.

Deinceps, postulante Defensore Vinculi, Revdus Auditor schedam reserat quam idem Defensor clausam exhibuerat continentem interrogatoria testi proponenda, et ad examen testis procedit qui ad singulas quaestiones respondet ex ordine.

Quae omnia interrogatoria et responsa authentice consignata inveniuntur sub No. ..... Actorum.

De his omnibus redacta est praesens relatio quae a Revdo Auditore, Defensore Vinculi et Actuario subscribitur.

Datum ex Aula Sessionum
Curiae Matrimonialis .....
die .....a ....., 19...

.....
Auditor.

.....
Def. Vinc.

.....
Actuarius.

FORM 48

DECREE OF PUBLICATION OF TESTIMONY, EVIDENCE AND RECORD OF PROCEDURE

By virtue of my office as Auditor in the above numbered and entitled cause,

Whereas, the testimony and evidence on behalf of the plaintiff and of the defendant has been completed, and

Whereas, the Defensor Vinculi has no further testimony or evidence to offer in this cause,

IT IS ORDERED that the said testimony be published, and that all the parties to this cause have the right to read said testimony and obtain copies thereof.

IT IS FURTHER ORDERED that all documentary evidence filed in this cause by either parties be published and be open for inspection and examination by each of said parties and their representatives. Copies of said documents may be obtained if necessary.

IT IS FURTHER ORDERED that all the parties to this cause have the right to examine the record of the procedure of the Court in this cause.

Given at Court,
this the ..... day of ....., 19...

.....
Auditor.

.....
Secretary.

FORM 49

NOTICE TO THE PARTIES AFTER THE DECREE OF PUBLICATION

..... (*Name of plaintiff or defendant.*)
(*Address*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to notify you that the testimony in this case has been completed, and that a decree of publication of the testimony and evidence filed in this case has been issued by the Court on the ..... day of ....., 19....

You are further notified that, according to the provisions of Canon Law, you have the right to read the testimony which has been produced and filed. If after reading this testimony, you object to said testimony because that same is not true, is contradictory, improbable, vague or indefinite, or not taken in accordance with the prescriptions of Canon Law, you have the right to submit your objections to the testimony, or any part of same, in writing to this Court. It is your duty to state with clearness not only the name of the witness to whose testimony you object, but also the particular facts in said testimony together with the specific reasons for your objection.

You have likewise the right to examine the documentary evidence which has been filed herein, and also to submit your written objections to any or all documents, stating your reasons therefor.

You have the further right to examine the record of the procedure of the Court in this case.

Copies of the testimony, of the documentary evidence and of other parts of the record in this case may be obtained by you.

You have the further right to submit to this Court any additional proof which you may possess.

All of which must be done within the next ten days following the service of this notice. If any additional delay is necessary, written permission must be obtained from this Court for the extension of time.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 50

DECREE OF THE CLOSING OF THE TRIAL

ORDER

In this cause between .....
(*name of plaintiff*) and .....

(*name of defendant*), in which the nullity of their marriage is sought to be obtained by the plaintiff, both parties having been questioned as to whether or not they had any further proofs to offer, and having answered that they had none; and likewise the same question having been put to the Defensor Vinculi, Rev. . . . . , and he having answered in the negative;

And further considering all the documents and testimony which have been filed in this cause, and that there appears no further proof available,

IT IS ORDERED by this Court that the trial of this cause be now declared to be concluded, and that the Procurators of the parties be notified to prepare in writing their arguments and briefs, and to file same with this Court on or before the . . . . . day of . . . . . , 19. . . .

Given at Court,
this the . . . . . day of . . . . . , 19. . .

. . . . . .
Auditor.

. . . . . .
Secretary.

FORM 51

NOTICE TO THE PROCURATORS OF THE PARTIES AFTER THE DECREE OF CLOSING OF THE TRIAL

.....(*Name of Procurator.*)
(*Address*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to notify you that there having been a decree of closing of the trial, issued on the ..... day of ....., 19..., it is now your duty as Procurator of ..... plaintiff (defendant) in this cause, to prepare in writing and submit to the Court on or before the .....day of ....., 19..., the reasons and arguments in support of plaintiff's (defendant's) contentions.

Secretary's Office
this the ..... day of ....., 19...

.....
Secretary.

FORM 52

ORDER TO SERVE BRIEF ON OPPOSING PARTY

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of .....,

The Procurator for the plaintiff (defendant) having filed his written arguments on behalf of the plaintiff (defendant),

IT IS ORDERED by the Court that a copy of these arguments be served upon the opposing party to this suit. And let the said opposing party be notified that he has the right to file a supplemental brief in answer to the said arguments of the plaintiff (defendant). The supplemental answer to be filed within ..... days.

Let the said opposing party be further notified that if he should desire to orally argue the case, such privilege may be granted to him by the Court upon his written request. This request should be made within the next ..... days.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

FORM 53

NOTICE TO THE OPPOSING PARTY

..... (*Name of opposing party.*)
(*Address.*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to inform you that ....., plaintiff (defendant) in this cause, having filed his written argument, a copy of which accompanies this notice, you, the defendant (plaintiff) in said cause, have the right to file a supplemental brief in answer to the said argument of the plaintiff (defendant).

You have the further right, if you should so desire, to request a hearing before the Judges, in which you will be permitted to orally argue the case.

Both your written argument and your request for oral argument, if you should desire to make one, must be filed in this Court within ..... days from the service of this notice.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

FORM 54

ORDER TO SERVE THE BRIEFS OF PLAINTIFF AND DEFENDANT UPON DEFENSOR VINCULI

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause,

Whereas, the Procurators have filed their original (and supplemental) briefs, and the case is ready for submission to the Court; and

Whereas, under Canon Law, the Defensor Vinculi is entitled to receive a copy of all briefs, arguments, etc., which have been filed by both parties to this litigation;

IT IS ORDERED by the Court that copies of all briefs (original and supplemental) be delivered to the Defensor Vinculi.

IT IS FURTHER ORDERED that the Defensor Vinculi shall prepare and file his written reasons and deliver same to this Court at his earliest convenience.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

FORM 55

NOTICE TO DEFENSOR VINCULI

To Rev. .....,
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to notify you that an order has been issued on the ..... day of ....., 19..., that copies of all briefs filed by both parties to this cause be delivered to you.

As Defensor Vinculi you are required to prepare and present to this Court your arguments concerning this cause. This should be done at your earliest convenience.

Respectfully yours,

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

FORM 56

ORDER TO DELIVER BRIEF OF DEFENSOR VINCULI TO THE LITIGANTS

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of ....., in the above numbered and entitled cause,

IT IS ORDERED that a copy of the brief herein filed by the Defensor Vinculi shall be served upon each of the party litigants to this cause.

IT IS FURTHER ORDERED that the Secretary of the Court shall notify in writing both of said parties, the plaintiff and the defendant, that they may answer said brief in writing within ..... days from the date hereof.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

FORM 57

NOTICE TO THE PARTY LITIGANTS

To .....
Plaintiff (*or* Defendant)

Acting under the instructions of the Matrimonial Court for the Diocese of ....., I am enclosing herein a copy of the brief filed in this cause by the Defensor Vinculi, Rev. .....; and I am now notifying you that you are allowed to answer this brief in writing. The time limit within which you are allowed to file your written answer has been fixed by the Court at ..... days from the date hereof.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

FORM 58

ORDER OF THE COURT

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause,

IT IS HEREBY ORDERED that a copy of the answer filed by ..... plaintiff (defendant) in the above numbered and entitled cause, to the brief of the Defensor Vinculi, Rev. ....., shall be delivered to the said Defensor Vinculi.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

Form 59

LETTER OF THE SECRETARY TO THE DEFENSOR VINCULI

To Rev. .....,
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to deliver to you the answer which has been filed by the plaintiff (defendant) to your brief. Therefore, acting under the instructions of the Court, I now deliver to you a copy of this answer.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 60

ORDER TO DELIVER COPIES OF BRIEFS TO THE ASSOCIATE JUDGES

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of .....

The above numbered and entitled cause now being ready to be submitted to the Judges of this Court for their determination of same,

IT IS ORDERED by the Court that copies of all briefs filed herein by the Procurators of the parties to this litigation and by the Defensor Vinculi be delivered to each Associate Judge. These briefs contain the written arguments of the various parties to this cause in support of their contentions. All of the documents, affidavits, testimony, etc., are on file in the office of this Court, and should be examined by each Associate Judge.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

Form 61

NOTICE TO THE ASSOCIATE JUDGES

To Rev. .....
Associate Judge,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, to notify you that an order has been issued on the ..... day of ....., 19..., that copies of all briefs filed in the above numbered and entitled cause be delivered to you.

In compliance with said order, I am now sending you copies of the following briefs:

1. .....,
2. .....,

etc.

All original documents and testimony of witnesses are on file in the office of the Court, and you may examine them at your convenience.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 62

LETTER TO DEFENSOR VINCULI

To Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of ....., it is my duty to notify you as Defensor Vinculi in the above numbered and entitled cause, that this matter is now ready for final determination.

You will please notify this Court as to whether, in your opinion, this cause has been regularly proceeded with, and whether you feel, in conformity with the duties of your office, that there is nothing further that should be called to the attention of the Judges.

We shall await an expression of opinion from you before rendering our decision. If within three days from the reception of this letter we

do not hear from you, we shall consider that you have no further suggestions or recommendations to make.

Given at Court,
this the ..... day of ....., 19...

Yours sincerely,

.....
Officialis.

.....
Secretary.

Form 63

ORDER FOR OPINIONS TOGETHER WITH REASONS THEREFOR

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of .....,

Whereas, the above numbered and entitled cause is now ready for consideration and final determination of same,

IT IS ORDERED by the Court that the Court shall convene on the .... day of ..... 19..., in the office of the Court, for the purpose of receiving the individual opinion of each

Judge together with his reasons therefor, and for rendering the final decision of the Court.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

Form 64

NOTICE TO THE ASSOCIATE JUDGES

To Rev. .....
Associate Judge,
(*Address.*)

Reverend and dear Father:

An order having been issued by the Court on the ..... day of ....., 19..., it is my duty as Secretary of this Honorable Court to inform you that, as Associate Judge appointed to hear and determine the above numbered and entitled cause, you should individually decide this cause, and propose your written reasons in support of your decision.

The Court shall convene on the ..... day of ....., 19..., in the Court-room, for the purpose of receiving your decision together with the written reasons therefor, and for rendering the final judgment.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 65

CONCLUSIONES REVDI ....., JUDICIS COLLEGIALIS, IN CAUSA NULLITATIS MATRIMONII INTER ....., ACTOREM, ET ....., PARTEM CONVENTAM

1. Historia causa prouti continetur in actis processualibus.
2. Clare indicetur nodus quaestionis, seu impedimentum quod ab actore invocatur tanquam causa nullitatis matrimonii.
3. Quid de hoc impedimento in Codice Juris Canonici, et in sententiis Curiae Romanae?
4. Quid de hoc impedimento in causa praesenti?
5. Conclusio Judicis: Constat (vel non constat) de nullitate matrimonii.

.....
(*Nomen urbis*),
die .....a ....., 19...

.....
Judex Collegialis.

FORM 66

SENTENTIA

IN DEI NOMINE. AMEN.

1. Revmus ....., Officialis,
Rev. ....., Judex Collegialis,
Rev. ....., Judex Collegialis,
in hac causa nullitatis matrimonii inter .....
....., actorem, ...,
(*domicilium*), repraesentatum per legitimum Procuratorem ..... (*nomen Procuratoris*), et ..... partem conventam, ... (*domicilium*), repraesentatam per legitimum Procuratorem, ... (*nomen Procuratoris*), interveniente et discreptante in causa Rev. ....., Vinculi Defensore,
die .....a ....., 19..., sequentem definitivam tulerunt sententiam.

2. (*Hic habetur expositio seu historia causae; quid dicat actor, et quid dicat pars conventa.*)

3. Omnibus quae de jure erant explenda peractis, quaestio hac die solvenda proponitur sub dubio: "An constet de nullitate matrimonii inter ....., actorem, et ....., partem conventam?"

4. (*Hic sequuntur motiva de jure et de facto quibus innititur Judicum sententia.*)

IN JURE .....
AD FACTUM QUOD ATTINET .....

5. (*Pars positiva sententiae*)

Quibus omnibus consideratis et sedulo perpensis, Christi nomine invocato, Nos, infrascripti Judices, pro Tribunali sedentes, et solum Deum prae oculis habentes, decernimus, declaramus et definitive sententiamus:

Constare de Nullitate Matrimonii inter ....., actorem, et ....., partem conventam.

Seu dubio superius proposito: "An constet de nullitate matrimonii inter ....., actorem, et ....., partem conventam?", respondemus: AFFIRMATIVE.

Pariter decernimus et mandamus omnibus Tribunalis ministris quibus spectat, ut haec nostra sententia publicetur secundo (vel tertio) modo a canone 1877 Codicis Juris Canonici indicato.

In expensis vero hujus litis .....

(*detur decisio Tribunalis de expensis sive a victo victori reficiendis, sive ab utraque parte ferendis.*)

Datum ex Aula Sessionum Tribunalis,
(*directio.*)
die .....a ....., 19...

.....
Officialis.

.....
Judex Coll.

.....
Judex Coll.

.....
Actuarius.

FORM 67

MINUTES OF THE LAST SESSION

IN DEI NOMINE. AMEN.

Anno Domini 19..., die .....a ....., hora ....., in aula sessionum Hujus S. Tribunalis, adsunt:

Revdus ....., Officialis,
Revdus ....., Judex Collegialis, Ponens,
Revdus ....., Judex Collegialis,
Revdus ....., Actuarius.

Revmi Judices conclusiones suas, scripto exaratas, attulerunt, quae sub Nis..., ..., ..., Actorum consignatae inveniuntur.

Revdus ....., Ponens, prior dat suam opinionem in favorem nullitatis matrimonii.

Revdus ....., Officialis, deinde conclusionem legit qua decernit non constare de nullitate dicti matrimonii.

Postea Revdus ....., opinionem suam exponit qua se declarat in favorem nullitatis.

Sequitur moderata disputatio in qua nullus Judicum a propria sententia recedit. Quapropter, ad normam can. 1577, sententia definitiva fertur ad majorem suffragiorum partem, nempe

duobus suffragiis in favorem nullitatis, uno suffragio contra stante.

Judices deinde deliberant de motivis sententiae, et unanimiter concordant circa motiva in sententia referenda.

Rev. Ponens ipsam sententiam post sessionem exarabit, quae deinde subscribetur a Revdis Judicibus.

De quibus omnibus redacta est praesens relatio, quae ab omnibus praesentibus subscribitur.

Datum ex Aula Sessionum Tribunalis,
die .....a ....., 19...

.....
Officialis.

.....
Judex Coll.

.....
Judex Coll.

.....
Actuarius.

Form 68

PUBLICATION OF THE SENTENCE

Notice to Plaintiff's Procurator

To .....(*Name of Procurator.*)
(*Address.*)

It is my duty, as Secretary of the Matrimonial Court for the Diocese of ....., to notify you as Procurator of ....., plaintiff in the above numbered and entitled

cause, that on the ..... day of ....., 19..., a sentence was rendered in this cause, decreeing the marriage between the said..... (*name of plaintiff*) and ..... (*name of defendant*) to be null.

You are further notified that under Canon Law, it is the duty of the Defensor Vinculi to suspensively appeal within ten days to the Matrimonial Court for the Archdiocese of ....., and therefore this sentence cannot be executed until final decision of the Appellate Court is received, of which decision you will be notified in due time.

A copy of the sentence rendered by the Matrimonial Court for the Diocese of ..... accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 69

PUBLICATION OF THE SENTENCE

Notice to Defendant

To .....(*Name of defendant.*)
(*Address.*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of .....

to notify you, the defendant in the above numbered and entitled cause, that on the ..... day of ....., 19..., a sentence was rendered in this cause, decreeing the marriage between yourself and ....., (*name of plaintiff*) to be null.

You are further notified that, under Canon Law, it is the duty of the Defensor Vinculi to suspensively appeal, within ten days, to the Matrimonial Court for the Archdiocese of ....., and therefore this sentence cannot be executed until final decision of the Appellate Court is received; of which decision you will be notified in due time.

Under the provisions and regulations of Canon Law, you also have the right to take an appeal from this sentence to the Matrimonial Court for the Archdiocese of ..... This appeal must be taken within ten days from the service of this notice.

A copy of the sentence rendered by the Matrimonial Court of ..... accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

FORM 70

PUBLICATION OF THE SENTENCE

Notice to Defensor Vinculi

To Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... to notify you, the Defensor Vinculi in the above numbered and entitled cause, that, on the ..... day of ....., 19..., a sentence was rendered in this cause, decreeing the marriage between ....., plaintiff, and ....., defendant, to be null.

You are further notified that, under Canon Law, can. 1986, it is your duty to suspensively appeal, within ten days from the service of this notice, to the Matrimonial Court for the Archdiocese of ..... sitting as an Appellate Court, or to the S. Romana Rota.

A copy of the sentence rendered by the Matrimonial Court for the Diocese of ..... accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 71

PUBLICATION OF THE SENTENCE

Notice to Plaintiff's Procurator

To .....(*Name of Procurator.*)
(*Address.*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... to notify you as Procurator of ....., plaintiff in the above numbered and entitled cause, that on the ..... day of ....., 19..., a sentence was rendered in this cause refusing to declare null the marriage between ..... (*name of plaintiff*) and ..... (*name of defendant*).

You are further notified that, under Canon Law, you have the right to take an appeal from this sentence to the Matrimonial Court for the Archdiocese of ..... sitting as an Appellate Court, or to the S. Romana Rota. This appeal must be taken within ten days from the service of this notice.

A copy of the sentence rendered by the Matrimonial Court for the Diocese of ..... accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 72

PUBLICATION OF THE SENTENCE

Notice to Defendant

To .....(*Name of defendant.*)
(*Address.*)

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... to notify you, the defendant in the above numbered and entitled cause, that, on the ..... day of ..... 19.., a sentence was rendered in this cause, refusing to declare null the marriage between yourself ..... (*name of defendant*) and ..... (*name of plaintiff*).

A copy of the sentence accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 73

PUBLICATION OF THE SENTENCE

Notice to Defensor Vinculi

To Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of .....

to notify you, the Defensor Vinculi in the above numbered and entitled cause, that, on the ..... day of ..... 19.., a sentence was rendered in this cause, refusing to declare null the marriage between ..... (*name of plaintiff*) and ..... (*name of defendant*).

A copy of the sentence accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

FORM 74

NOTICE OF APPEAL

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE DIOCESE OF .....

The petition of Rev. ....., Defensor Vinculi in the above numbered and entitled cause, with respect represents:

That a judgment of this Honorable Court was rendered in this cause on the ..... day of ..... 19.., decreeing that the marriage between ..... (*name of plaintiff*) and ..... (*name of defendant*) be null, and that your petitioner was notified of the rendition of the said judgment on the ..... day of ..... 19..

Your petitioner further represents that, under the provisions of Canon Law, Can. 1881, it is the duty of your petitioner to notify this Honorable Court that he will suspensively appeal from the judgment of this Honorable Court.

Wherefore your petitioner prays that this petition be accepted by Your Honorable Court as the notice required by Canon Law, that your petitioner is appealing to the Court of Appeal, which has been properly designated under the provisions of Canon Law to hear causes decided by Your Honorable Court as a Court of first instance, and which your petitioner respectfully shows is the Matrimonial Court for the Archdiocese of .....

And your petitioner further prays that, in accordance with the provisions of Canon Law, the judgment heretofore pronounced on the ..... day of ..... 19.. be suspended until such time as a final judgment be rendered by the Appellate Court.

Petitioner further prays that this Honorable Court order the record in this cause to be sent and filed with the Appellate Court.

Petitioner further prays for all general and equitable relief.

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
Def. Vinc.

Form 75

ORDER TO SEND RECORD OF CASE TO APPELLATE COURT

ORDER

Let the petition presented on the ..... day of ..... 19... by Rev. ....., Defensor Vinculi in the above numbered and entitled cause, be filed, and let the notice of a suspensive appeal from the judgment rendered by this Court in this cause on the ..... day of ..... 19.., be received and accepted by this Court as the notice of such suspensive appeal as required under the provisions of Canon Law.

And let the record in this case be sent and filed in the Matrimonial Court for the Archdiocese of .....

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

FORM 76

RECEIPT OF NOTICE OF APPEAL

To Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... to inform you that this Court has received your notice stating that you will appeal this cause to the Matrimonial Court for the Archdiocese of ....., which is the Appellate Court for the Diocese of .....

In conformity with the provisions of Canon Law, I will immediately send the record in the case to the Appellate Court.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....
Secretary.

Form 77

CERTIFICATE OF TRANSCRIPT

I, the undersigned Secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, hereby certify that this transcript contains a full and complete copy of all of the pleadings, testimony, documents and briefs filed in this case, together with the minutes, judgments and rulings of the Court.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 78

TO BE USED WHEN THE ORIGINAL RECORD OF THE CASE IS SENT TO APPELLATE COURT

I, the undersigned secretary of the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, hereby certify that the foregoing bound volume is the original record and contains all of the pleadings, testimony, documents and briefs filed in this case, together with the minutes, judgments and rulings of the Court.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

.... FORM 79

TRANSMITTING OF APPEAL

TO THE HONORABLE THE MATRIMONIAL COURT FOR THE ARCHDIOCESE OF .....
SITTING AS AN APPELLATE COURT

An appeal having been taken in the above numbered and entitled cause from the Matrimonial Court for the Diocese of ..... to Your Honorable Court, it is my duty as Secretary of the said Matrimonial Court for the Diocese of ..... to send the entire record in this cause to Your Honorable Court.

I therefore at this time respectfully deliver all the papers, documents, etc., comprising the entire record to Your Honors.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

FORM 80

APPEAL

TO THE HONORABLE COURT FOR THE ARCHDIOCESE OF ..... SITTING AS AN APPELLATE COURT

The petition of Rev. ....., Defensor Vinculi of the Matrimonial Court for the Diocese of ....., with respect represents:

That on the ..... day of ..... 19.., a judgment was rendered by the Matrimonial Court for the Diocese of ..... in the above numbered and entitled cause, a copy of which judgment is annexed hereto and made part of this petition, decreeing the marriage between ..... (*name of plaintiff*) and ..... (*name of defendant*) to be null.

Your petitioner further represents that said judgment was published and brought to the knowledge of your petitioner on the ..... day of ..... 19...

Your petitioner further represents that as Defensor Vinculi it is his duty under Canon Law to appeal from this judgment to Your Honorable Court, and that his appeal is based upon the following reasons:

(State reason why the judgment of the lower Court should be reversed by the Appellate Court.)

Your petitioner further represents that on the ..... day of ..... 19.., he filed in the Court of first instance, viz., the Matrimonial Court for the Diocese of ....., a notice of this suspensive appeal from the judgment in this cause rendered, as hereinbefore stated, on the ..... day of ..... 19..; and a request that the record in this case be sent to your Honorable Court. That said notice and request have been received and accepted by order of the Court of first instance. A copy of said notice of appeal is annexed hereto and made part of this petition.

Your petitioner further represents that he respectfully prays for the assistance of Your Honorable Court in the prosecution of this appeal to the final termination of this cause by a judgment of Your Honorable Court.

Wherefore, your petitioner prays that this petition be received and accepted by Your Honorable Court as a compliance by your petitioner with the provisions of Canon Law governing appeals from the Courts of first instance; and your petitioner further prays that a final judgment be rendered in his favor.

Petitioner further prays for all general and equitable relief.

.....
(*Name of the place*),
this the ..... day of ....., 19...

.....
Def. Vinc.

Form 81

FILING OF PETITION

IN RE
Nullity of Marriage
Rev. .....
Appellant
vs.
.....
Appellee

Appealed from the Matrimonial Court of .....

Matrimonial Court for the Archdiocese of .....
Sitting as a Court of Appeal
Number: .....

Hodie recepta est Appellatio a Revdo ....., Defensore Vinculi in Curia Matrimoniali Dioecesis ....., ad Hanc Revmam Curiam Metropolitanam ..... (*name of Archdiocese*) directa, qua dictus Defensor Vinculi a sententia nullitatis appellat a Revma Curia Matrimoniali ..... (*name of Diocese*) prolata in causa matrimonii inter ..... (*name of plaintiff*) et ..... (*name of defendant*) initi.

Pariter receptum est exemplar Sententiae a Revma Curia Matrimoniali ..... (*name of Diocese*) prolatae.

Haec causa numerata est ..... inter causas Tribunalis secundae instantiae Hujus Revmae Curiae Metropolitanae.

Datum ex Aedibus Cancellariae,
die .....a ....., 19...

.....
Actuarius.

Form 82

Hodie recepta sunt acta judicialia causae matrimonialis ..... (*name of plaintiff*) inter et ..... (*name of defendant*) instructae et judicatae a Revma Curia Matrimoniali ..... (*name of Diocese*).

Quae acta judicialia simul cum appellatione Revdi ..... (*name of Defensor Vinculi*), Defensoris Vinculi in Curia primae instantiae, ad Revdum ..... (*name of Officialis*), Officialem Revmae Curiae Metropolitanae (*name of Archdiocese*), a me infrascripto Actuario hac die delata sunt.

Datum ex Aedibus Cancellariae,
die .....a ....., 19...

.....
Actuarius.

FORM 83

ORDER FOR THE APPOINTMENT OF THE ASSOCIATE JUDGES

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Archdiocese of ..... (*name of Archdiocese*), there having been filed in this Court, sitting as an Appellate Court having jurisdiction over the Matrimonial Court for the Diocese of ..... (*name of Diocese*), an appeal in the case of ..... (*name of plaintiff*) *vs.* ..... (*name of defendant*),

IT IS ORDERED that

Rev. ....., Synodal Judge, and

Rev. ....., Synodal Judge,

be and they are hereby appointed as Associate Judges for the consideration and determination of this cause.

IT IS FURTHER ORDERED that the record of the case and a copy of the petition herein filed be served upon the Defensor Vinculi, Rev. ....., for his examination.

IT IS FURTHER ORDERED that a meeting of the Court shall be held in the Court-room on the ..... day of ....., 19.., at the hour of ..... o'clock.

.....
Officialis.

Given at Court,
this the ..... day of ....., 19...

.....
Secretary.

FORM 84

NOTICE OF APPOINTMENT OF ASSOCIATE JUDGE

Rev. .....
Synodal Judge,
(*Address.*)

Reverend and dear Father:

The cause of ..... (*name of plaintiff*) *vs.* ..... (*name of defendant*), having been appealed to the Matrimonial Court for the Archdiocese of ..... (*name of Archdiocese*), it is my duty as Secretary of the Court in the above numbered and entitled cause to inform you ....., etc. (*See Form 11.*)

FORM 85

NOTICE TO THE DEFENSOR VINCULI

Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

There having been filed in the Matrimonial Court for the Archdiocese of ..... (*name of Archdiocese*), sitting as an Appellate Court, an appeal in the case of ..... (*name of plaintiff*) *vs.* ..... (*name of defendant*), it is my duty as Secretary of the Court in the

above numbered and entitled cause to inform you that on the ..... day of ....., 19.., an order has been issued by this Court directing me to serve upon you the record of the case sent by the secretary of the Court of first instance.

It will be your duty to consider the foregoing acts and documents and determine

1. Whether or not the Matrimonial Court of ..... (*name of the Diocese of the lower Court*) had jurisdiction over this case;

2. Whether or not the appeal has been taken by the proper person, and whether or not it has been perfected and filed in accordance with the provisions of Canon Law;

3. Whether or not the provisions of Canon Law were followed in the conduct of the trial and the rendition of the sentence.

Your report must be made in writing and brought by you to this Court at the session to be held at Court on the ..... day of ....., 19.., at the hour of ..... o'clock.

Secretary's Office,
this the ..... day of ....., 19...

Respectfully yours,

.....

Secretary.

FORM 86

DECREE OF ACCEPTANCE OF THE APPEAL

ORDER

Considering the petition of appeal that has been filed in the above numbered and entitled cause by Rev. ....., Defensor Vinculi in said cause in the Court of first instance, the Matrimonial Court for the Diocese of ..... (*name of Diocese*), and considering the instructions of Canon Law applicable thereto, and after having heard the Defensor Vinculi of this Metropolitan Court, Rev. ..... (*name of Defensor Vinculi of the Appellate Court*),

IT IS ORDERED, ADJUDGED AND DECREED by this Court that the petition of appeal filed with this Court be received, and that the trial be proceeded with in conformity with the provisions of Canon Law.

IT IS FURTHER ORDERED, ... etc. (*See Form 16.*)

FORM 87

CITATION OF APPELLEE

Mr. .....
(*name of appellee.*)
(*Address.*)

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Archdiocese of .....,

You are hereby notified that the appeal taken by Rev. ..... (*name of Defensor Vinculi in the Court of first instance*) in this cause in which you were successful in the trial Court of ..... (*name of Court of first instance*), has been accepted by the Metropolitan Matrimonial Court for the Archdiocese of ....., sitting as an Appellate Court.

A copy of the petition of appeal is annexed hereto.

The following judges have been appointed to act in this cause under the provisions of Canon Law:

Rev. ....., Officialis
Rev. .....,
Rev. .....

Rev. ..... (*name of Defensor Vinculi in the Appellate Court*) is the Defensor Vinculi in this cause.

Unless an objection valid under the provisions

of Canon Law is made by you to these Judges and the Defensor Vinculi, they will constitute the Court which will try this cause.

You have the right to file with this Court any objection allowed by Canon Law to the trial of this cause by this Court, that is, an objection ratione personae or ratione materiae.

In the absence of exceptions, you are hereby summoned to deliver your answer to the appellant's petition in writing, and to file it in the office of the Secretary of the Court ..... (*address*).

Either your objections or your answer must be filed within ..... days from the service of this notice.

If the appellant should file any additional reasons, evidence or arguments in this Court to show that the decision of the lower Court is incorrect and should be reversed, you shall be notified and a copy of any reasons, evidence or arguments so advanced will be sent to you.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

FORM 88

SENTENTIA

IN DEI NOMINE, AMEN

Revdus ....., Officialis,
Revdus ....., Judex Collegialis,
Revdus ....., Judex Collegialis,
instante pro appellatione Revdo ....., Vinculi Defensore Curiae Matrimonialis ..... (*name of Diocese of first instance*), adversus sententiam ab eadem Curia Matrimoniali die ..... a ..... 19.. prolatam nullitatis matrimonii inter ..... (*name of plaintiff*) repraesentatum(tam) per legitimum Procuratorem ..... (*name of procurator*) et ..... (*name of defendant*), repraesentatam(tum) per legitimum Procuratorem ..... (*name of Procurator*), interveniente et disceptante in causa Revdo ..... (*name of Defensor Vinculi of Appellate Court*), die ..... a ....., 19.., sequentem definitivam tulerunt sententiam.

(*Hic habetur expositio seu historia causae prout in Tribunali primae instantiae instructae et judicatae.*)

Quapropter omnibus quae de jure erant explenda peractis, quaestio hac die ab Hoc S. Tribunali Metropolitano solvenda proponitur sub dubio: "An sit confirmanda vel reformanda

sententia Revmae Curiae Matrimonialis .... (*name of Diocese of first instance*)."

IN JURE ..... etc. (*See Form 66.*)

Quare proposito dubio: "An sit confirmanda vel reformanda sententia Revmae Curiae Matrimonialis .....," respondemus:

Affirmative ad primam partem.

Negative ad secundam.

Pariter decernimus et mandamus omnibus etc ..... (*See Form 66.*)

Form 89

PUBLICATION OF THE SENTENCE

NOTICE TO APPELLANT AND APPELLEE

To ..... (*Name of Appellant or Appellee.*)
(*Address*)

It is my duty as Secretary of the Matrimonial Court for the Archdiocese of ....., acting as Appellate Court in the above numbered and entitled cause, to notify you that on the ..... day of ..... 19.., a sentence was rendered in this cause affirming (*or* reversing) the judgment of the lower Court, the Honorable Matrimonial Court for the Diocese of ..... and declaring null and void (*or* valid) the marriage between..... and .....

A copy of the sentence accompanies this notice.

Secretary's Office,
this the ..... day of ....., 19...

Secretary.

Form 90

DECREE OF EXECUTION OF THE SENTENCE

ORDER

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Archdiocese of ....., and under the provisions of Canon Law,

Whereas, on the ..... day of ....., in the year of Our Lord 19.., a decree has been rendered by this Court, sitting as an Appellate Tribunal in the above numbered and entitled cause, declaring the marriage between ..... (*name of plaintiff*), plaintiff, and ..... (*name of defendant*), defendant herein, to be null and void ab initio;

Whereas, there has been no appeal taken by the appellant or the Defensor Vinculi within the time prescribed by law, and the said judgment of this Court now being final and ready for execution;

Wherefore, the Matrimonial Court for the Archdiocese of ....., through the under-

signed Officialis, respectfully prays His Lordship, Right Reverend ....., D.D., (*name of the Ordinary of the Court of first instance*), Bishop of ..... (*name of Diocese*), that this sentence of the Court be executed by him, in accordance with the formalities, provisions and directions of Canon Law.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

Form 91

NOTICE TO THE ORDINARY OF THE COURT OF FIRST INSTANCE

To the Right Rev. ....., D.D.,
Bishop of .....,
(*Address.*)

Your Lordship:

It is my duty as Secretary of the Matrimonial Court for the Archdiocese of ..... to notify Your Lordship that on the .... day of ....., 19.., an executory decree was issued by this Honorable Court sitting as an Appellate Tribunal in the above numbered and entitled cause. Your Lordship will find enclosed a copy

of this executory decree together with a copy of the judgment of the Court.

Secretary's Office,
this the ..... day of ....., 19...

Very respectfully yours,

.....
Secretary.

Form 92

LETTER OF THE EXECUTOR OF THE SENTENCE TO THE PARTY LITIGANTS

Mr. ..... (*name of plaintiff or defendant*)
Plaintiff (Defendant)
(*Address.*)

Whereas We, ... (*name of the Ordinary*), Bishop of ..... (*name of Diocese*), have been notified by the Reverend Officialis of the Matrimonial Court for the Archdiocese of ..... to the effect that a judgment has been rendered by the said Metropolitan Matrimonial Court declaring the marriage between yourself and ..... (*name of other party litigant*), celebrated on the .... day of ....., 19.., to be null and void ab initio, and that said judgment has now become final; and,

Whereas We, as Ordinary of the Diocese of ....., have been petitioned by the Reverend Officialis of the Metropolitan Matrimonial Court to execute said judgment in accordance

with the formalities, provisions and directions of Canon Law;

We therefore do by these presents execute said decree, and notify you that the marriage between yourself and ..... (*name of other party litigant*) is finally declared to be null and void, and that, under the laws of the Catholic Church, both yourself and ..... (*name of other party litigant*) are free to contract another marriage the same as though your marriage which has been annulled had never taken place.

(*Give the decision of the Court about the costs and expenses.*)

From Our Episcopal Residence,
this the ..... day of ....., 19...

.....
Bishop of .....
.....
Chancellor.

Form 93

NOTICE TO THE PARISH PRIEST OF THE CHURCH WHERE THE MARRIAGE WAS CELEBRATED

Revdo .....,
Parocho Ecclesiae .....,
(*Directio.*)

Reverende Domine:

Die ..... a ....., 19.., omnibus a jure praescriptis rite et fideliter peractis, prolata est

a Tribunali secundae instantiae, Curia nempe Matrimoniali Archidioecesis ....., sententia qua confirmata est sententia Curiae Matrimonialis Dioecesis ....., quae, die..... a ....., 19.., nullum et invalidum, ratione dirimentis impedimenti ....., declaraverat matrimonium inter ..... (*nomen actoris*) et ..... (*nomen partis conventae*), die ..... a mensis ....., 19.., in Ecclesia paroeciali ..... (*nomen Ecclesiae*), in civitate (*vel* pago) ..... (*nomen civitatis vel pagi*), celebratum.

Die vero ..... a ....., 19.., editum fuit decretum executorium, quo nempe dicta sententia executioni mandanda declarata est.

Quare, pro officio nostro, hisce praesentibus notam tibi facimus praefatam sententiam Curiae Matrimonialis Archidioecesis ....., ut, ad normam can. 1988, in regestis matrimoniorum dictae Ecclesiae ..... (*nomen Ecclesiae in qua celebratum est matrimonium*) hujus sententiae mentionem facias.

Datum ex Aedibus Nostris Episcopalibus,
die .....a ....., 19...

Tibi in Christo addictissimus,

.....
Episcopus .....
.....
Cancellarius.

FORM 94

NOTICE TO THE PARISH PRIESTS OF THE CHURCHES WHERE THE PARTY LITIGANTS WERE BAPTIZED

Revdo .....
Parocho Ecclesiae .....
(*Directio.*)

Reverende Domine:

Die ..... a ..... 19.., omnibus a jure praescriptis rite et fideliter peractis, prolata est a Tribunali secundae instantiae, Curia nempe Matrimoniali Archidioecesis ....., sententia qua confirmata est sententiae Curiae Matrimonialis Dioecesis ....., quae, die ..... a ..... 19.., nullum et invalidum, ratione dirimentis impedimenti ....., declaraverat matrimonium inter ..... (*nomen actoris*) et ..... (*nomen partis conventae*), die ..... a ..... 19.., in Ecclesia paroeciali ..... (*nomen Ecclesiae*), in civitate (*vel* pago) ..... (*nomen civitatis vel pagi*) celebratum.

Die vero ..... a ....., 19.., editum fuit decretum executorium, quo nempe dicta sententia executioni mandanda declarata est.

Quare, pro officio nostro, hisce praesentibus notam tibi facimus praefatam sententiam Curiae Matrimonialis Archidioecesis ..... ut, ad normam can. 1988, dictae sententiae mentionem

facias in regestis baptismorum Ecclesiae paroecialis ..... (*nomen Ecclesiae*), in qua, die ..... a ..... 19.., baptizatus (baptizata) fuit ..... (*nomen actoris vel partis conventae*).

Datum ex Aedibus Nostris Episcopalibus,
die .....a ....., 19...

Tibi in Christo addictissimus,

.....
Episcopus .....
.....
Cancellarius.

Form 95

PETITION WRITTEN OUT BY SECRETARY

On this the ..... day of ....., in the year of Our Lord ...., personally came and appeared before me ..... (*name of plaintiff*) who declared unto me that he (she) desired to file a petition in this Honorable Court, and that he (she) desired to state orally the facts, and requested me to write out the petition containing these facts and allegations to this Honorable Court.

Wherefore, I listened to petitioner's statement and have reduced it to writing in the following form and words, to wit:

(*Statement of the case as given by petitioner.*)

The following documents were submitted and filed in connection with this petition.

(*List of documents*)

I hereby certify that the above and foregoing is true and correct.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 96

ORDER TO SEND DOCUMENTS TO THE DEFENSOR VINCULI

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of .....,

IT IS HEREBY ORDERED that a copy of the petition together with the documents filed by the plaintiff in the above numbered and entitled cause be served upon the Defensor Vinculi, Rev. ..... (*name of the Defensor Vinculi*).

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

FORM 97

LETTER OF THE SECRETARY TO THE DEFENSOR VINCULI

Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

It is my duty as Secretary of the Matrimonial Court for the Diocese of ..... to inform you as Defensor Vinculi ex officio that the case of ..... (*name of plaintiff*), plaintiff, *vs.* ..... (*name of defendant*), defendant in the above numbered and entitled cause, having been presented to this Matrimonial Court for adjudication, an order has been issued by this Court on the ..... day of ..... 19..., directing me to serve upon you a copy of the plaintiff's petition together with the documents filed with the said petition.

It will be your duty to consider the foregoing petition and to determine whether or not in your judgment the petitioner has the right to accuse the validity of said marriage, and whether this Court has jurisdiction in this cause.

It will be your further duty to determine, after due consideration of said petition and documents, whether in your judgment this cause falls under the provisions of Canon 1990.

It will be your further duty to make your report in writing and to bring it to this Court at your earliest convenience.

Secretary's Office,
this the ..... day of ....., 19...

.....
Secretary.

Form 98

REPORT OF THE DEFENSOR VINCULI

Cum, litteris ad me, die ..... a ....., 19.., directis, a Revdo ..... (*nomen Officialis*) Officiali Matrimonialis Curiae Dioecesis ..... (*nomen dioecesis*), mandatum acceperim declarandi quid sentiam

1. De jure actoris, ... (*nomen actoris*) accusandi matrimonium;

2. De competentia Hujus Revmae Curiae Matrimonialis hac in causa;

3. De titulis hujus causae ad hoc ut inter exceptiones a canone 1990 praevisas connumerari possit;

omnibus documentis rite et attente consideratis, reverenter quae sequuntur Huic Revmae Curiae Matrimoniali submitto.

1. .....(*nomen actoris*), actorem, jus habere matrimonium accusandi ad normam can. 1971 § 1.

2. Hanc Revmam Curiam Matrimonialem ..... competentiam habere hac in causa ex can. 1964.

3. Hanc causam annumerari inter exceptiones a can. 1990 praevisas.

..... (*Locus.*)
die .....a ....., 19...

.....
Def. Vinc.

Form 99

DECREE OF THE COURT ACCEPTING THE CASE

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese of .....,

Whereas, the petition of ..... (*name of plaintiff*) has been received and filed in this Court on the ..... day of ....., 19.., praying that his (her) marriage to ..... (*name of defendant*) celebrated on the ..... day of ....., 19.., in the church of ..... (*name of the church where marriage was celebrated*), be declared null because of ..... (*diriment impediment given as reason for nullity*); and,

Whereas, the Defensor Vinculi, Rev. ..... has been informed of the facts and circumstances, and, after examination of the evidence

produced by the said petitioner, makes no objection to same;

It is the opinion of this Court that this cause falls within the provisions of Can. 1990 of the Code of Canon Law, and may be proceeded with summarily and without the solemnities of a trial.

IT IS THEREFORE ORDERED that ..... (*name of plaintiff*) the plaintiff herein, and ..... (*name of defendant*), the defendant herein, be duly cited to appear before this Court on the ..... day of ....., 19.., at the hour of ....., at ..... (*address of the place*).

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

Form 100

CITATION OF THE DEFENSOR VINCULI

Rev. .....
Defensor Vinculi,
(*Address.*)

Reverend and dear Father:

By virtue of the authority vested in me as Officialis of the Matrimonial Court for the Diocese

of ....., and by virtue of your office as Defensor Vinculi,

You are hereby notified to be present on the ..... day of ....., 19.., at the hour of ....., at ..... (*address*) at which time and place the plaintiff in the above numbered and entitled cause, ... (*name of plaintiff*), and the defendant, ... (*name of defendant*), have been summoned to appear in person.

Given at Court,
this the ..... day of ....., 19...

.....
Officialis.

.....
Secretary.

APPENDIX I

MATRIMONIUM RATUM, NON CONSUMMATUM

The Sacred Congregation of the Sacraments alone has jurisdiction over cases of marriage ratified but non-consummated. Therefore no other Court or inferior judge can hold a canonical trial in such cases, unless they have received special delegated faculties for that purpose.

The procedure to be followed in the conduct of these cases has been published in the year 1923 by the S. Congregation of the Sacraments under the title of

REGULAE SERVANDAE

In processibus super Matrimonio rato et non consummato, cum Appendice praecipuorum actorum formularum, quae utiliter et opportune adhibentur in his causis. (Romae—Typis Polyglottis Vaticanis—MCMXXIII).

This book should be in the possession of every member of our Diocesan Matrimonial Courts.

Briefly, the practical method to commence the proceedings in the case of a marriage ratified but not consummated is for one or both of the married parties to apply to the Bishop, stating

their case and the relief which they are seeking: a dispensation from their marriage. The Bishop should obtain all the information necessary [1] to satisfy himself that the fact of the non-consummation of the marriage is sufficiently shown, and that the reasons for requesting the dispensation are such as to justify him in sending the case to the Holy See.

It is then the duty of the Bishop to send to the Secretary of the S. Congregation of the Sacraments, Palazzo della Cancelleria Apostolica, Rome, the petition of the party or parties prepared in the form prescribed in the *Regulae servandae.*

The S. Congregation of the Sacraments will (if it determines there is merit in the case) delegate the authority to the Bishop to prepare the case for its consideration, that is, to receive all the pleadings, take the testimony and depositions of witnesses, receive all documents and do whatever else may be necessary in order that a complete record may be sent to it for its determination.

The Bishop may in turn delegate this authority to a priest who will act in his place as Judge instructor.

It is important to remember that in cases of Matrimonium ratum non consummatum, there

[1] This information is only a preliminary step and is not to be confused with proof; therefore it is not obtained through an official trial.

are two essential elements which must be shown clearly in the preparation of the case:

1. The proof of non-consummation, which, while necessary, yet is not by itself sufficient to petition for the dispensation.

2. In addition to the non-consummation of the marriage, there must exist serious reasons why the dispensation would be beneficial either to the parties themselves or to society in general. Hence, great care should be given to the proof of these reasons, as they are the real basis of the case, and when presented to the Roman Court become the impelling considerations for the granting of the dispensation.

All the details of procedure which must be followed by the Judge instructor in the preparation of the case are fully described in the *Regulae;* the authority and the duties of each officer of the Court are clearly defined. The *Regulae* minutely describe the procedure in these cases and must be strictly adhered to; otherwise the S. Congregation of the Sacraments may refuse to consider the record.

Practical suggestion: Due to the manifold duties of the Roman Courts, unless a representative in Rome is selected to whom the record should be sent in order that he personally may present same to the Secretary of the S. Congregation of the Sacraments and personally see that the case is expeditiously tried, there is grave

danger of long delays. In selecting such a representative, it would be prudent to choose an ecclesiastical lawyer familiar with the practice of the Roman Courts. Too much emphasis cannot be laid upon this suggestion.

As has been previously stated, the Diocesan Matrimonial Court has no jurisdiction over cases of Matrimonium ratum et non consummatum. Yet, it is possible for a case of this character to be presented in error to the Diocesan Court, as for example where impotency is alleged and it is shown by the proof that impotency does not exist and the case is in fact a case of Matrimonium ratum et non consummatum. If this should occur, it is the duty of the Court to send the entire record to the S. Congregation of the Sacraments, together with the necessary petition for the dispensation and the reasons why the dispensation should be granted.

APPENDIX II

LATIN NOMENCLATURE FOR THE DIOCESES OF THE UNITED STATES

Compiled from the "Annuario Pontificio"

Albany	Albanum Americae	Albanensis in America
Alexandria	Alexandria in Luisiana	Alexandrinensis in Luisiana
Altoona	Altunia	Altunensis
Amarillo		de Amarillo Amarillensis
Baker City	Bakeria	Bakeriensis
Baltimore	Baltimora	Baltimorensis
Belleville	Bellevillium	Bellevillensis
Bismarck	de Bismarck	Bismarckiensis
Boise	Xylopolis	Xylopolitana
Boston	Bostonia	Bostoniensis
Brooklyn	Brooklynum	Brooklyniensis
Buffalo	Buffalum	Buffalensis
Burlington	Burlingtonia	Burlingtonensis
Charleston	Carolopolis	Carolopolitana
Cheyenne	Cheyennum	Cheyennensis
Chicago	Chicagia	Chicagiensis [1]
Cincinnati	Cincinnatus	Cincinnatensis
Cleveland	Clevelandia	Clevelandensis
Columbus	Columbus	Columbensis
Concordia	Concordia	Concordiensis in America
Corpus Christi	Corpus Christi	Corporis Christi
Covington	Covingtonium	Covintonensis [2]
Crookston	Crukstonium	Crookstoniensis
Dallas	Dallasium	Dallasensis
Davenport	Davenportus	Davenportensis
Denver	Denverium	Denveriensis
Des Moines	Desmoines	Desmoinensis
Detroit	Detroitum	Detroitensis
Dubuque	Dubuquium	Dubuquensis
Duluth	Duluthum	Duluthensis
El Paso	de Paso	Elpasensis
Erie	Eria	Eriensis
Fall River	Riverormium	Riverormensis
Fargo	Fargus	Fargensis

Fort Wayne	Castrum Wayne	Wayne Castrensis
Galveston	Galvesopolis	Galvestoniensis
Grand Island		Insulae Grandis seu Kearneyensis
	de Kearney	
Grand Rapids	Grandormium seu Flumen Rapidum	Grandormensis [3]
Great Falls	de Great-Falls	Great-Ormensis
Green Bay	Sinus Viridis	Sinus Viridis
Harrisburg	Harrisburgum	Harrisburgensis
Hartford	Hartfordia	Hartfortiensis [4]
Helena	Helena	Helenensis
Indianapolis	Indianapolis	Indianopolitana
Kansas City	Kansanopolis	Kansanopolitana
La Crosse	Crossena	Crossensis
Lafayette	de Lafayette	Lafayettensis
Lead	Leadensis	Leadensis
Leavenworth	Leavenworthium	Leavenworthiensis [5]
Lincoln	Lincolnia	Lincolnensis
Little Rock	Petricula	Petriculana
Los Angeles & San Diego	Angelorum S. Didaci	Angelorum S. Didaci
Louisville	Ludovicia Ludovicopolis	Ludovicopolitana
Manchester	Manchesterium	Manchesteriensis [6]
Marquette, *See* Sault Ste. Marie		
Milwaukee	Milwauchia	Milwauchiensis [7]
Mobile	Mobilia	Mobiliensis
Monterey-Fresno	Mons Regis-Fresnum	Montereyensis-Fresnensis
Nashville	Nasburgum	Nashvillensis
Natchez	Natchesium	Natchetensis
Newark	Novarcum	Novarcensis
New Orleans	Nova Aurelia	Novae Aureliae [8]
New York	Neo-Eboracum	Neo-Eboracensis
Ogdensburg	Ogdensburgum	Ogdensburgensis
Oklahoma	Oklahoma	Oklahomensis
Omaha	Omaha	Omahensis
Oregon City	Oregonopolis	Oregonopolitanus
Peoria	Peoria	Peoriensis
Philadelphia	Philadelphia	Philadelphiensis
Pittsburgh	Pittsburgum	Pittsburgensis
Portland	Portlandia	Portlandensis
Providence	Providentia	Providentiensis [9]
Raleigh		Raleighiensis
Richmond	Richimondia	Richmondiensis [10]
Rochester	Rucupae	Roffensis in America
Rockford	Rockfordium	Rockfordiensis
Sacramento	de Sacramento	Sacramentensis
St. Augustine	S. Augustinus	S. Augustini
St. Cloud	S. Clodoaldus	S. Clodoaldi
St. Joseph	S. Joseph	S. Joseph in America
St. Louis	Ludovicopolis	S. Ludovici

St. Paul	Paulopolis de Minnesota	S. Pauli de Minnesota
Salt Lake	Lacus Salsus	Lacus Salsi
San Antonio	S. Antonius	S. Antonii
San Francisco	S. Franciscus	S. Francisci in California
Santa Fé	S. Fides	S. Fidei in America
Sault Ste. Marie and Marquette	Marianopolis et Marqueta	Marianopolitana et Marquettensis
Savannah	Savannum	Savannensis
Scranton	Scrantonia	Scrantonensis
Seattle		Seattlensis
Sioux City	Siopolis	Siopolitana
Sioux Falls	Siouxonium	Siouxormensis
Spokane	de Spokane	Spokanensis
Springfield (Ill.)	Campifontis	Campifontensis in Illinois
Springfield (Mass.)	Campifons	Campifontis [11]
Superior	Superior	Superiorensis
Syracuse	Syracusae	Syracusensis
Toledo	Toletum	Toletana in America
Trenton	Trentonum	Trentonensis
Tucson	Tucsonium	Tucsonensis
Wheeling	Whelingenium	Whelingensis [12]
Wichita	Wichita	Wichitensis
Wilmington	Wilmingtonia	Wilmingtoniensis [13]
Winona	Winona	Winonensis

The following forms appear in "Acta et Decreta Concilii Plenarii Baltimorensis Tertii":

[1] Chicaginensis; [2] Covingtonensis; [3] Fluminis Rapidi; [4] Hartfordiensis; [5] Leavenworthensis; [6] Mancestriensis; [7] Milwaukiensis; [8] Neo-Aurelianensis; [9] Providentiae; [10] Richmondensis; [11] Campi Fontis; [12] Velingensis; [13] Wilmingtonensis.

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